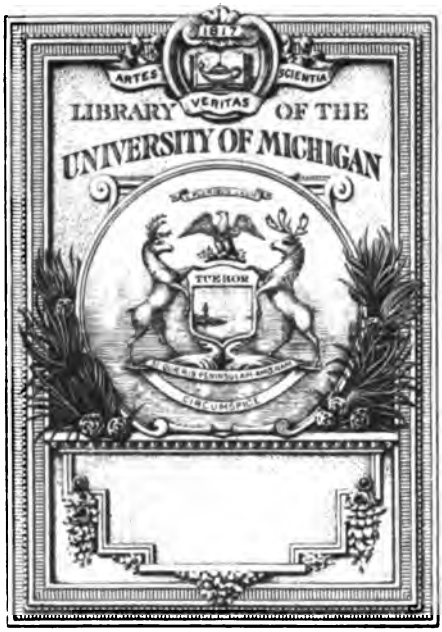

PART VII.

To be Published on 1*st January* 1839,

WILL CONTAIN

PRINCIPLES OF JUDICIAL PROCEDURE; WITH THE OUTLINE OF A PROCEDURE CODE.

THE RATIONALE OF REWARD.

LEADING PRINCIPLES OF A CONSTITUTIONAL CODE FOR ANY STATE.

ON THE LIBERTY OF THE PRESS, AND PUBLIC DISCUSSION; ADDRESSED TO THE SPANISH PEOPLE.

THE

WORKS

OF

JEREMY BENTHAM,

NOW FIRST COLLECTED;

UNDER THE SUPERINTENDENCE OF HIS EXECUTOR,

JOHN BOWRING.

PART VI.

Directions for binding, with Introduction (to be bound in v.1) new title-pages and tables of contents, are bound in v.11, pt.2.

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WILLIAM TAIT, 78 PRINCE'S STREE
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MDCCCXXXVIII.

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PART VI.

CONTAINING

OFFICIAL APTITUDE MAXIMIZED; EXPENSE MINIMIZED;
CONTINUED:—viz.

7. Observations on Mr. Secretary Peel's Speech.
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1. Boa Constrictor, *alias* Helluo Curiarum.
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they had been an object of purchase, and public money the proper sort of money to be employed in the purchase, no small quantity of such money would, in that case, have been necessary.

In the way of experiment — in the endeavour to make this purchase, money, though the man's own, and not public money, was, in the duke's case, actually employed, and in memorable and still-remembered abundance: but how completely the experiment failed, is at least as well remembered.

To return to the deficiency of the sort in question, supposed to have been, on the more recent occasion, displayed in the same place. This deficiency, then, — such as it was and still is — parliament, in the case of Mr. Pitt, did not, so long as he lived, think fit to supply: at any rate, left unsupplied. What was done was — the giving a mass of public money — to the amount of £40,000 or thereabouts — among a set of people, names undisclosed, but said to be the deceased minister's *creditors*. Friends remembered their friendships: enemies, now that the enemy was no longer in their way, forgot their enmity: friends and enemies vied in sentimentality — vied in generosity — always at the public expense: and a justification, yea, and more than a justification, was thus made, for the cases of the still *future-contingent* widow of Lord Grenville, and the then *paulo-post* FUTURE widow of Mr. FOX.

Should it here be asked why those trustees of the people chose to saddle their principals with the payment of debts, for which they were not engaged, and the necessity of which they themselves could not take upon themselves to pronounce, — my answer is — that if anything in the shape of an *efficient*, *final*, or *historical* cause will satisfy them, plenty may be seen already: — but if by the word *why*, anything like a *justificative* cause — a *rational* cause — a good and sufficient *reason* — be meant to be asked for, I for my part know of none. At the same time, for the support of the proposition that stands on my side of the argument — it being the negative — viz. that for no such purpose as that of encouraging and inducing ministers to apply to their own use the money of individuals, can it ever be necessary that money raised by taxes should be employed — for the support of any proposition to this effect — so plain does the proposition seem to me, that neither can I see any demand for a support to it in the shape of a *reason*, nor in truth should I know very well how to go about to find one. Not thus clear of all demand for support is the side taken by the right honourable gentleman. By his vote and influence whatsoever on that occasion was done, having been supported and encouraged, on him, in point of consistency, the obligation is incumbent: he stands *concluded*, as the lawyers say, in both ways: on the one hand, not having ventured to propose any correspondent addition, or any addition at all, to be made to the mass of emolument openly and constantly attached to the office, he is *estopped* from saying that any such extra expenditure was necessary; — on the other hand, having, in the case of the individual by whom that expenditure was made, concurred in the vote and act* passed for filling up, at the public charge, the gaps made by that same expenditure in the property of other individuals, he stands convicted by his own confession of concurring in charging the public with a burthen, the necessity of which could not be so much as pretended.

On this occasion, "may we not venture to ask," whether this may not be in the number of those cases, in which gentlemen, honourable gentlemen, under the guidance of right honourable, have, in the words of our right honourable author, been "*misled by mistaken ideas of virtue?*" (p. 77.)

Be this as it may, by this one operation, which is so much to the taste of the right honourable gentleman — (not to speak of so many other right honourable, honourable, and even pious gentlemen) — two distinguishable lessons, may they not be seen given — two distinguishable lessons given to so many different classes of persons, standing in so many different situations? One of these lessons, to wit, to ministers; the other to any such person or persons whose situation might enable them to form plans for fulfilling their duty to themselves, by lending money to ministers.

To ministers an invitation was thus held out, to expend upon themselves, in addition to whatever money is really necessary, as much more as it may happen to them to be disposed so to employ, of that which is not necessary.

Thus far as to the *quantum*: — and as to the *mode*, by borrowing money, or taking up goods of individuals, knowing themselves not to have any adequate means of repayment, and determining not to put themselves into the possession of any such means.

To persons at large, an invitation was at the sametime held out to become *intriguers*; and, by seizing or making opportunities of throwing themselves in the way of a minister, to supply him with money, more than he would be able to repay on demand, and having thus got him in a state of dependence, to obtain from his distress — always at the expense of the public — good gifts in every imaginable shape: — *peerages* — *baronetcies* — *ribbons* — *lucrative offices* — *contracts* — assistance in parliamentary *jobs*, — good things, in a word, of all sorts, for which, no money being paid or parted with, neither the giver nor the re-

* 46 Geo. III. cap. 149, § 15.

ceiver would run any the slightest risk of being either punished, or in any other way made responsible.

By a *loan*, though, for example, it were but of £5000, if properly timed—and that on both occasions—first as to the time of the administering the supply, and then as to the time of pressing for repayment,—*that*, may it not every now and then be done, which could not have been done by a gift of £10,000? How often have not *seats*, for example, been in this way obtained—and this even without any such imputation as that of the sin, the venial sin, of parliamentary simony?

In virtue of the invitation thus given by the magnanimity and generosity of parliament,—an invitation open at all times to the acceptance of persons to whom it may happen to find themselves in the corresponding situations—who is there that does not see, how snugly the benefit of bribery may be reaped on both sides, and to any amount, without any of the risk?

A banker is made a lord. Why is a banker to be made a lord? What is it that the banker ever did, that he is to be made a lord? A merchant is made a lord. Why is a merchant to be made a lord? What is it that the merchant ever did, that he is to be made a lord?—These are among the questions which are in themselves as natural, as the answers, true or untrue, might be unpleasant to some and dangerous to others.

We have heard, many of us, of the once celebrated *Nabob of Arcot* and his *creditors*: and the mode in which their respective debts were to an as yet unfathomed extent, contracted: those debts, which, in so large a proportion, and to so large an amount, just and unjust together, in name the expiring Company, and in effect the whole body of the people, have paid, or, spite of the best possible discrimination, will have to pay.

By the example set, and lesson held out, by the *virtue* of the right honourable gentleman, and his right honourable and honourable coadjutors, the policy of Arcot, was it not thus sanctioned and imported into Great Britain? "Ministers, plunge your hands as deep as you can into other people's pockets: intriguers, supply profuse and needy ministers with whatever they want, and make the most of them: we will be your sureties; our care it shall be, that you shall not be losers."

Against the opinions of so many great characters — such has been my temerity — over and over again have I laboured to prove, I know not with what success, that *money* is not the only coin in which it may happen to a public man to be willing to take payment of the public for his labour: and that *power* and *reputation*, — though they will not, like shillings and halfpence, go to market for butter and eggs, — yet, like Exchequer bills, within a certain circle, they are not altogether unsusceptible of a certain degree of currency. Of the truth of this proposition, the Mr. Pitt in question affords at least one instance.

It proves indeed something more: for, in so far as purposely forbearing to receive what it is in a man's option to receive, is tantamount to paying, — it proves that, in the instance in question, the value of these commodities was equal to that of a very considerable sum of money: in round numbers, worth £40,000 — at any rate, worth more than £39,000.

Not that in the eyes of the hero, money had no value: for it had much too great a value: it possessed a value greater than the estimated value of common honesty and independence.

He loved money, and by much too well; he loved it with the love of *covetousness*. Not that he hoarded it, or put it out to usury. But there are two sorts of covetous men; those who covet it to keep it, and those who covet it to spend it: the class he belonged to was this *coveting-and-spending* class.

Yes: — *that* he did: — Pitt the second did love money: and not his own money merely, but other people's likewise: loving it, he coveted it; and coveting it, he obtained it.

The debt which he contracted was so much money coveted; obtained, and expended, for and in the purchase of such miscellaneous pleasures as happened to be suited to his taste. The sinecure money which he might have had and would not have, was so much money expended in the shape of *insurance money* on account of power: in the purchase of that *respect* and *reputation*, which his prudence represented as necessary to the preservation of so valuable an article against storms and tempests from above. Sinecure money, to any given amount, the hero could have got for himself, with at least as much facility as for his right honourable panegyrist; but the *respect* and the *reputation* were defences, which in that situation could not be put to hazard. Of the battles he had to fight with the sort of *dragons* commonly called *secret advisers*, this bare hint is all that can be given by one who knows nothing of anybody or anything: his right honourable *Achates*, by whom he must (alas! how oft!) have been seen in a tottering and almost sinking attitude, — more particulars could doubtless be given, by a great many, than by a gentleman of his discretion it would . . . . (unless it were in a posthumous *diary*, for which posterity would be much obliged to him) be "*useful on his sole authority . . . . to enter into any detail of.*" It was to enable virtue to rise triumphant out of all these trials, that the amount of all this sinecure money was thus *expended*, and without having been *received*.

SECTION XI.

CONCERNING INFLUENCE.

On the subject of *influence* (page 74,) what the right honourable gentleman *admits*, is — that owing to the greatly increased revenue, and all the other augmented and "accumulated business of the state," some increase has, though "unavoidably, been occasioned in it," viz. by "increase of patronage." At the same time, notwithstanding this increase, yet, in point of practice, the state of things, if we may trust to his conception, is exactly as if there were no such thing at all as influence. How so? Why, for this plain reason, viz. that "the influence created by such means is *infinitely* short of what," viz. "by the measures of economy and regulation to which recourse has been had"— "has been given up."

Thus far the right honourable author. But in the humble conception of his obscure commentator, the question between the two quantities, one of which is, in the hands of the right honourable accountant, multiplied by one of those figures of rhetoric, which, in aid of the figures of arithmetic, are so much at his command — multiplied in a word to "*infinity*" — this question is not, on the present occasion, the proper one. In regard to *influence*, the question which, with leave of the public, the obscure commentator would venture to propose — as and for a more proper one, is — whether, for any existing particle of this influence, any preponderant use can, in compensation for the acknowledged evil consequences of it, be found? and if not, whether there be any, and what, quantity of it left remaining, that could be got rid of? Understand, on each occasion, as being a condition universally and necessarily implied — without prejudice in other respects, — and *that* preponderant prejudice — to the public service.

As to these points, what appears to me, with submission, is — that, without travelling out of this the right honourable gentleman's own work, an instance might be found of a little sprig of influence, which, without any such preponderant prejudice to *Mr. Reeve's tree*, might be pruned off.

This work of his (I mean Mr. Rose's) has for its title — "*Observations respecting the Public Expenditure, and the Influence of the Crown.*"

But unfortunately, as, in due place and time, the candour of the right honourable gentleman himself, in effect, acknowledges, these *observations* of his — and from so experienced an observer — are *all on one side*.

On the subject of expenditure, out of 79 pages, 61 have been expended in showing us what retrenchments have been made, and how great they are. Are they indeed so great? So much the better: but even yet, considering that if we may believe the right honourable gentleman himself (p. 62,) the whole revenue of Great Britain is "*more than* £60,000,000 *a-year*," let the retrenchments have been ever so great, the demand for further retrenchment, wheresoever it can be made, without preponderant prejudice to the public service, seems by no means to be superseded.

Subject to that necessary condition, is there any such further retrenchment practicable? This is exactly what the right honourable gentleman has not merely avoided, but positively refused to tell us.

From first to last, this work of his has, according to the author's own account of it, but one aim; and that is, by showing how great the retrenchments are that have been made already, to stop our mouths, and prevent our calling for any more. Is it then true, that in this way all has been done that ought to be done? Even this, not even in terms ever so general, will he vouchsafe to tell us. "To what extent or in what manner it may be proper to press further retrenchment, the author," says he, p. 62, "has not the remotest intention of offering an opinion: his view has been clearly explained."

Looking for the explanation, the clearness of which is thus insisted on, I find it, if I do not mistake, in his last preceding page but one, viz. in p. 60, in which, speaking of this his work by the name of "the present publication," — "In endeavouring to set right the public opinion on this subject, the performance of an act of justice to *any* administration, is," he says, "but a *small part* of its use; a much *more important* consideration is, its effect in producing that salutary and reasonable *confidence*, which gives the power of exertion to the government, and that concurrence which seconds its exertions among the people."

Thus far the right honourable author. For my own part, if my conception concerning a government's title to confidence be not altogether an erroneous one, this title depends in no inconsiderable degree on its disposition "*to press further retrenchments:*" (p. 62.) I mean of course, in so far as, in the judgment of that government, they are not otherwise than "*proper*" ones. Yet this the right honourable gentleman — a member of this same government, and that in the very next rank to the highest, and receiving (besides sinecure money) no less than £4000 a-year for being so, peremptorily — and, as we have seen, of his own accord, — refuses to do.

He will not do any such thing: and why not? On this point we might be apt to be at a stand at least, if not at a loss, were it not for the lights with which, in another page (p. 74) the right honourable author himself has

favoured us. His "opinions" on the subject, he there acknowledges, are "*strong ones*;" but strong as they are, or rather because they are so strong, he will not let us know what they are; because "*on his sole authority*," that is, unless other opinions that in the scale of office stand yet higher than his, concurred with his, "*it would not be useful*:" — there would be *no use* in it. No use in it? what! not on a subject of such vital importance — when, for the declared purpose of "setting right the public opinion on this subject," a right honourable author, who knows all about it, takes up the pen, can it be that there would be no use in speaking what he thinks is right? and as much of it as he has to speak? No use in his speaking impartially? — in speaking on both sides, and on all sides, what he thinks?

But not to go on any further in thus beating the bush, may we not in plain English venture to ask — at the bottom of all his delicacy, can any other interpretation be found than this, viz. that by those, for whose defence and for whose purposes — and, to come to the point at once — under whose *influence* this work of his was written, his speaking as he thinks, and what he thinks right — his speaking out on both sides, would it in his own persuasion have been found not endurable?

If so, here then we have a practical illustration and development of a number of preceding hints. Here we see the character — here we see one effect and use — of that "*aristocracy of talent and virtue*" with which, in the account of remuneration, nothing but money will pass current — nothing but money is of any value — and which constitutes so necessary an addition to the "*aristocracy of rank and property*."

Here we see what is, and what we are the better for, the fruit of "that principle of activity," (p. 66,) which animates men in the attainment, so much more than in the mere possession of power and station, "and of that amusement, which, for the acquisition and improvement of talents necessary for the higher offices, gentlemen have given themselves, in passing *occasionally* through the inferior situations."

"Of the *unpopularity* and *ridicule* that has so often been attempted to be fixed on the word *confidence*," the right honourable gentleman has, as he is pleased to inform us, according to his own statement (p. 61,) had "*some experience*." One little item, to whatsoever may have been the stock laid up by him of that instructive article, he may find occasion to make. To that sort of *confidence* which is "*unthinking and blind*," this "unpopularity and ridicule," he appears to look upon as not altogether "*inapplicable*," nor consequently the sort of "*attempt*" he speaks of, viz. that of fixing it on the word *confidence*, as altogether incapable of being attended with success."

But can anything be more "*unthinking and blind*" than that confidence which should bestow itself on an official man, howsoever right honourable, who, in treating of a subject confessedly of high national importance, and after furnishing, in favour of one side, whatsoever information his matchless experience, his unquestioned ingenuity, his indefatigable industry, can rake together, — and feeling, on the other side of his mind, "*opinions*" — and those "*strong* ones," nor doubtless unaccompanied with an adequate knowledge of facts — of those facts from which they receive their existence and their strength — should refuse — deliberately, and peremptorily, as well as spontaneously, refuse — to furnish any the least tittle of information from that other side.

Eloquent and zealous in support of profusion, mute when the time should come for pleading in favour of retrenchment, not without compunction let him behold at least one consequence. Destitute of all competent, of all sufficiently qualified, of all officially qualified, advocates — deserted even by him who should have been its solicitor-general, thus it is that the cause of *economy* is left to take its chance for finding here and there an advocate among low people, who have never been regularly called to this high *bar*: interlopers, who, destitute of all prospect of that "remuneration" which is the sole "*principle of activity that animates men in the attainment of power and station*" (p. 66.) destitute of the advantage of "*passing occasionally through even the inferior situations*" (p. 66,) are destitute of all "*talent*," destitute of all "*virtue*," — and whose productions, if, for the purpose of the argument, they could for a moment be supposed capable of contributing, on the ground here in question, anything that could be conducive to the public service, would, one and all, be so many effects without a cause.

SECTION XII.

CONCERNING PECUNIARY COMPETITION — AND THE USE MADE OF THE PRINCIPLE.

BEFORE the subject of *influence* is dismissed, a word or two may, perhaps, have its use, for the purpose of endeavouring to submit to the consideration of the right honourable panegyrist, an article of *revenue*, viz. *crown lands*, which neither on his part, nor on the part of his hero, seems to have received quite so much attention as could have been wished.

To the purpose of the present publication, a circumstance that renders this article the more material is — that it may contribute to

render more and more familiar to the eye of the reader a *principle*, on a due estimation of which the plan hereafter to be proposed depends for everything in it, that either promises to be in its effect eventually useful, or is in its application new.

Economy and *purity*—reduction of expense, and reduction of undue influence — in these may be seen the two distinguishable and distinguished, though intimately connected, objects, to which, speaking of the principle of *competition*, our right honourable author speaks of it as having been meant to be made subservient, and as having accordingly been made subservient, in the hands of Mr. Pitt — (p. 26.)

"Mr. Pitt," he informs us, p. 25, "looking anxiously to reforms, effected many even considerable savings — and at the same time sacrificed an influence as minister, much more dangerous than any possessed by the crown, *because more secret and unobserved;* the extent of it indeed could be known only to himself and to those in his immediate confidence. We shall state," continues he, "the measures in their order, — beginning with loans and lotteries, — proceeding with *private contracts*, and closing this part of the account with the profit derived from the mode irrevocably established respecting *the renewals of crown leases*. In each of which cases, the influence diminished was not only extensive, but was obviously in its nature more objectionable than any that could be acquired by the disposal of *offices;* as the effect of the former was *secret and unobserved*, whereas the latter is apparent and generally known."

Coming to crown lands (p. 34.) "The last head of saving by management," says he, "is under that of the estates of the crown. The act of the 1st of Queen Anne,* continued at the beginning of each succeeding reign, for limiting grants of crown lands to 31 years, put a stop to the actual alienation of the property of the crown; but, in its operation, had the effect of greatly adding to the influence of it, and certainly afforded no protection whatever to its revenues, as will be seen in the note below.† In reigns antecedent to that of Queen Anne, when grants were perpetual, the persons to whom they were made became immediately independent of the crown, and not unfrequently gave very early proofs of that independence: whereas, by the measure adopted on the accession of the Queen, every grantee, or the person representing him, became dependent on the minister for a renewal of his lease, for which applications were generally made at such times, and on such occasions, as were thought to afford the best hope of their being attended to, on terms favourable to his interest.

"Under this system Mr. Pitt, on coming into office, found the whole landed property of the crown, and the income arising from it, in every way, very little exceeding £4000 a-year.

"*He therefore, after long inquiries, and most attentive consideration*, applied a remedy in 1794, when an act was passed,‡ by which it is provided that no lease shall be renewed till within a short period of its expiration, nor till an actual survey shall have been made by two professional men of experience and character, who are required to certify the true value of the premises to the treasury, attested on their oaths. *No abuse can therefore take place*, nor any *undue favour be shown*, under the provisions of this law, *unless surveyors of eminence* in their line shall *deliberately perjure themselves*, or a treasury shall be found bold enough to grant leases, or renew them, at a less value than shall be certified to them, which could not escape immediate detection, as there is a clause in the act, requiring an account to be laid before parliament annually of what leases or grants shall have been made in the year preceding; for what terms or estates; the annual value, as returned on oath by the surveyors; the annual value of the last preceding survey; what rents shall have been reserved, or what fines paid; and upon what other considerations such leases shall have been respectively made.

"More strict provisions to guard against any evasion of the law could *hardly* have been devised."

Thus far our right honourable author: a word or two now from his obscure commentator.

Where, having determined with himself to obtain for public property the best price that is to be had, Mr. Pitt pursues that principle, my humble applause follows him: but when, without sufficient reason, he turns aside from that or any other principle, then my applause stops: applause, whatever in that case perseveres in following him, will be of that sort which comes from copartners and panegyrists.

When government annuities were the commodity to be disposed of, then it was that it was the choice of Mr. Pitt to have the best price: then it was that, choosing to have the best price, he adopted the mode, and the only mode, by which that effect can be produced.

When leasehold interests in crown lands were the commodity to be disposed of, then it was that it was not the choice of Mr. Pitt

* 1 Anne, st. 1, c. 7.

† "In fifteen years, to 1715, the whole income from crown lands, including rents, fines, and grants of all sorts, was £22,624 equal to £1,500 a-year — Journals of H. C., vol. xx. p. 520; and in seven years, to 1746, was £15,600, equal to £2,228 a-year — Journals, vol. xxv. p. 206."

‡ 34 Geo. III. cap. 75.

to have the best price. Then it was, accordingly, that, for fear of having the best price, care was taken *not* to employ the mode, the only mode, by which any such effect can be produced.

To avoid giving birth to the undesirable effect in question, the expedient employed was (we see) "an actual survey, made by two professional men of experience and character, who are required to certify the true value of the premises to the treasury, attested on their oaths."

"Under the provision of this law," one thing the right honourable gentleman endeavours to persuade us of (p. 35) — is, that "no abuse can take place, nor undue favour be shown." Why not? Because (says he) no such effect can take place "unless surveyors of eminence in their line shall deliberately perjure themselves or" — something else which he mentions shall take place, and which, admitting the improbability of it, I shall not repeat here.

As to *perjury*, the *word* is a *strong word*, and to the purpose of causing the reader to suppose that the security provided by it is a *strong security*, more conducive than any real lover of sincerity can be well pleased to find it. But, from the pen of a veteran in *office*, and in *offices*, and in *such* offices, to whom it cannot be altogether unknown, to how prodigious an extent the people of this country are made deliberately and habitually to perjure themselves — and how fond, under the guidance of priests and lawyers, the legislation and jurisprudence of this same country have been, of causing men, always without any the smallest use, deliberately to perjure themselves* — it is not without pain that a man, who has any real dislike to perjury, can behold this security held up to view in the character of a *real* one.

Cases there are (it is confessed with pleasure) in which this alleged security is an efficient one: as for instance, where testimony to a matter of fact is to be given, *vivâ voce*, in an open judicatory, and under the check of cross-examination: not that even in that case it is to the ceremony that the efficiency would be found ascribable, but to the cross-examination, and the publicity, with or without the eventual punishment. But in the case *here* in question, not one of all those elements of efficiency is to be found. The sort of perjury which the right honourable gentleman endeavours to make us take for a punishable offence, suppose it, for argument's sake, committed — was ever one instance known of a man being prosecuted for it as for perjury? Great would be my surprise to hear of any such case. Would so much as an indictment lie? I have not searched, nor to the present purpose does it seem worth while. Gross indeed must be the case, strong and clear; stronger and clearer than it seems in the nature of the case to afford — the proof by which, upon any such indictment, conviction must be produced.

Few, it is evident, are the sorts of articles — lands, houses, or any other such articles, coming under the head of *crown lands*, being unquestionably not of the number — few, about the value of which it may not happen to "surveyors of eminence, experience, and character" to entertain real differences of opinion; and moreover, and without the smallest imputation on that "*character*," much more without the possibility of suffering as for *perjury*, to agree in assigning such a value, as to a very considerable amount — according to circumstances, say 5, 10, 12, 15, 20, 50 per cent. (in short, one knows not where to stop) greater or less than what in their opinions respectively is the true one.

The real value of the premises is the joint result of some half dozen (suppose) of circumstances on each side: whereupon, on one side (suppose again) this or that little circumstance, somehow or other, fails of being taken into the account. Unless the human understanding were that perfect kind of machine which everybody acknowledges it not to be, who could think of speaking of it as importing so much as a speck upon a man's character, that any such little oversight has taken place? Meantime, the profit by the oversight may amount to thousands of pounds in any number.

Unfortunately for *economy*, still more unfortunately for *uncorruption*, the sort of contract here in question is one of those in which, with a pre-eminent degree of force, interest and opportunity join, in securing to the subject of valuation a false or under-value. What the one party, viz. the proposed lessee wants, is money; what the other party, the "discharger of duties and public trusts," wants, is *influence*. If the valuation be deficient, then, in proportion to the deficiency, both parties have what they want. Under a state of things so favourable to mutual accommodation, let any one, who feels bold enough, undertake to set a limit to the loss liable to be produced to the public by the substitution of this mode of sale, to the only one which is capable of finding out the real value. In a *fancy* article, such as a villa, or a site for a villa, cent. per cent. may be below the difference. Ten per cent. — to put, for argument's sake, a certain amount for an uncertain one — will surely be regarded as a very small allowance.

In this ten per cent., then, may be seen the amount of the *saving*, or the acquisition, call it which you please, which on the occasion in

* See "Swear not at all," &c. by the Author, Vol. V. p. 189, *et seq.*

question might have been made to the public, and was not made.

Thus much as to *revenue*. Then as to *influence*, "some judgment," as Mr. Rose observes, p. 37, "may be formed by observing, that of the persons holding crown leases when the act was passed, upwards of *eighty were* members of one or the other house of parliament; and it is hardly necessary to add," continues he, "that in the cases of *other lessees*, the parties, who might have the means of doing so, would naturally resort to solicitations of friends for obtaining the minister's favour."

Now, in the picture thus drawn of the state of the case, as it stood at *that* time—drawn by so experienced and expert a hand—so far as concerns *influence*, I, for my own part, till some distinct ground of difference is brought to view, cannot but see a picture equally correct of the state of the case as it stands at this moment; at this moment, viz. after and notwithstanding—not to say by reason of—the reform thus lauded. So far indeed as concerns revenue, I cannot doubt but that a very considerable change—and, so far as it goes, a change for the better, has been made; a change, for the amount of which I take of course the account given of it by Mr. Rose. But, so far as concerns *influence*, what I should not expect to find is, that any change, worth taking into account, had taken place. "*Eighty*," according to the right honourable gentleman, is the number of *members* so circumstanced at that time; *eighty*,—or rather, from that increasing division, which landed property, where it will serve for building, or even for sites of villas, naturally admits of, *more* than eighty—is the number which I should expect to find at present; not to speak of *expectants*, for whom, where the purpose of the argument requires it, the right honourable arguer knows so well how to take credit. For convincing an honourable or right honourable gentleman of the superiority of one ministry over another, ten per cent. upon any given sum will not, it is true, serve so effectually in the character of a persuasion, as thirty per cent.: but wherever the ten per cent. suffices, the abolished twenty per cent. would have been but surplusage, since thirty per cent. could do no more. The case of the villa contiguous to Chelsea Hospital—a case which, though it happened so long ago as the last session, is not yet, it is hoped, altogether out of recollection—may serve, and as well as half a hundred, for clearing and fixing our ideas on this subject. From that case may be formed some judgment, whether the impossibility of "abuse and undue favour" is quite so near to complete, as it would be for the convenience of the right honourable gentleman's acknowledged purposes that we should believe it to be.

All this while, a circumstance which has contributed in no small degree to that composure and tranquil confidence, of which my readers, if I happen to have any, may on this occasion have observed the symptoms, is—a surmise in which I have all along been indulging myself,—viz. that between the opinions of the right honourable author and those of his obscure commentator there does not, on this occasion, exist *at bottom* any very considerable difference.

"More strict provision to guard against any invasion of the law could *hardly*," says the right honourable author, "have been devised." But it will be for the reader to judge, whether the law in question be quite so well guarded against evasion, as, by this saving word *hardly*, the argument of the right honourable gentleman is guarded against any such impertinent charge as that of having said the thing that is *not*. Neither on this nor on any other occasion, could it easily have escaped a sagacity such as his, that a mode of sale, the sure effect of which is to perpetuate a constantly *inferior* price, is not quite so favourable either to increase of revenue or to diminution of influence, as a mode of sale, the sure effect of which is—to obtain, on each occasion, the *very best* price.

Pecuniary competition—*auction*—having, and in other instances to so great an extent—by this same hero, and with the special applause of this same panegyrist, been employed, as and for the best-contrived mode or instrument for obtaining, for such articles as government has to dispose of, the very best price—having been applied, and with so much success, in the case of government annuities—having been applied, and with so much success, in the case of contracts for stores—(for when there is no fraud, it is in form only, and not in effect, that, in this case, there is any difference between *competition* and *auction* in the common acceptation of the word)—and, moreover, in the case of the very sort of article here in question—in the case of *lands*—sale of leasehold interests presenting themselves to view in every newspaper, and even *letting by auction* in the first instance having nothing new in it, it would be a most instructive explanation, to us whose station is *without doors*, if in his next edition the right honourable author would have the goodness to inform us how it happened, that when, in the course of her voyage, economy had reached the latitude of the *crown lands*, she all of a sudden stopped short, and, instead of the best instrument for fishing out the best price, took up with so weak and ill-contrived an one. Is it that in the case of lands, *auction* is less well adapted than in the case of goods to an obtainment of the best price?—less well adapted to the obtaining that best price for leasehold interest in *lands*, to be paid for in money, than

for *money* to be paid for in *goods*? On the contrary, in the case of goods, to be supplied to government by contract, as in the case in question, with the benefit of competition, the right honourable gentleman, if not already informed, might with little difficulty be informed of cases upon cases, in which the rigour of the principle of competition receives a very convenient softening, from expedients which have no application in the case of lands.

In default of such full and authentic lights, as nothing short of the *experience*, joined to the condescension, of the right honourable gentleman, would afford us, it may be matter of amusement at any rate, if of nothing better, — to us whose station is on the *outside* of the curtain, — to figure to ourselves, in the way of guess and pastime, what, on the occasion in question, may have been passing *behind* it.

Before so desirable a head of reform as that in question could be brought even into the imperfect state dressed up as above by the ingenuity of our right honourable author, "*long inquiries, and most attentive consideration*," we are informed by him, p. 35, took place. Of these "*long inquiries*," no inconsiderable portion, if one who knows nothing may be allowed to guess, were naturally directed to so desirable an object as that of knowing what, in case of a change of the sort proposed, the *eighty* members, of whom we have seen him speaking, would be disposed to think of it: and of the "*attentive consideration*," no inconsiderable portion (it is equally natural to suppose) was bestowed upon the *objections*, which an *innovation* of this sort could not but have given birth to in so many honourable and right honourable minds.

With a set of hobgoblins, known among schoolboys by the collective appellation of the *secret advisers of the crown* — and of whom certain *sceptics* (such has been the growth of infidelity!) have of late (it seems) been found *Arians* or *Socinians* enough to question the existence, — our author's hero, there cannot be any doubt, supposing them always to have had existence, must have had to fight, on this, as on many other occasions, many a hard battle. Of such warfare, the result, on the occasion here in question, seems to have been a sort of compromise. To restraint upon the dilapidation of the revenue, *Fee, Faw, Fum* could be, and accordingly were brought to submit; — and thus it was that sale, grounded on collusive valuation, was substituted to absolute gift. To the diminution of influence, *Fee, Faw, Fum* could not, and would not be brought to submit: they would have gone off to *Hanover* or to *Hampshire* first: — and thus it was that sale, grounded on collusive valuation, was preferred to sale *for the best price*.

PAPER VII.

OBSERVATIONS ON MR. SECRETARY PEEL'S HOUSE OF COMMONS SPEECH,

21st MARCH 1825,

INTRODUCING HIS

POLICE MAGISTRATES' SALARY RAISING BILL,

(*Date of Order for Printing, 24th March* 1825.)

ALSO ON THE

ANNOUNCED JUDGES' SALARY RAISING BILL, AND THE PENDING COUNTY COURTS BILL.

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1. CLAUSES SIX: of minor importance, the four last: of major, the two first: whereof the second for establishing the measure: the first (the preamble) for justification of it.

Measure, £200 a-year added to the salaries of the existing thirty police magistrates. Original salary, £400 — see below. Last year but two (3 G. IV. c. 55,) so says clause 1st, — £200 added to it. Already comes the demand for as much more.

A reason is wanted — and such an one as shall amount to a justification. Ready at

hand is a complete one, and not less concise than complete; one single word — *expediency*. "And whereas it is *expedient* to increase the said salary." The House has *standing orders* — Parliament has standing *reasons*: at any rate it has this one, and this one is the standing representative of all others. To the wise, and from the wise, this one word is sufficient.

For this second £200 it is all-sufficient; whether it might have served equally for the first, time for search is wanting. But I would venture a small wager, that on that occasion it did so serve: it will serve equally well for any number of others. It is made of stretching leather. It *works well*, and wears well: it will be as good a thousand years hence, as it is at present. That which is *expedient* is *expedient*. What can be more *expedient* than *expediency*? .... I could not refrain looking. I should have won my wager. The *expediency* reason is not indeed applied exclusively to the salary-raising clause (No. 6,) but it shines in the preamble; and in that clause the lustre and virtue of it extends to all the others.

According to usage, the sum is left in blank in the bill: according to usage, the blank is filled up by the eloquence of the minister.

After having thus done the one thing needful, and stamped the measure with intelligibility, he might not perhaps have done amiss, had he left the justification of it to the wisdom of parliament, as above.

That injustice may be completely avoided, misrepresentation as far as possible, the *Times* and the *Morning Chronicle* — two of the most accredited sources of information — have upon this occasion been drawn upon, and the matter divided into numbered paragraphs; and, for the grounds of the respective observations here hazarded, reference has, by means of the numbers, been made to those several paragraphs.

Original salary, £400 a-year (see below.) Last year's addition, £200 a-year. Existing, what? £600. Magistrates, thirty. Aggregate of the addition, £6000 a-year: aggregate of the now proposed addition, another £6000 a-year; together, £12,000. Nature of the demand clear enough: not to speak of *reason*, which seems altogether out of the question: not so the alleged *grounds* of it. To tread them up has been *tread-wheel* work. Result, what follows.

Evils proposed to be remedied, deficiencies: 1. Deficiency in appropriate intellectual aptitude; 2. Deficiency in time employed in attendance. As to aptitude, during the £400 a-year (so says No. 2,) incompetence total. Thus far aptitude: the same certificate may, without much stretch of inference, be made to apply to quantity of attendance. These are the evils for which the second £200 a-year, multiplied by 30, is to suffice as a remedy. The first dose was administered two or three years ago: already it has been found insufficient, else why apply for another? But that which a single dose cannot effect, another dose may; and if this does not, others and others after them are at hand from the same shop.

For the remedying of these evils, the reality of them being supposed, begin as above and end as above: — the means provided by the wisdom of parliament.

That wisdom having thus exhausted itself, — for ulterior remedies, how little soever needed, comes, as will be seen, an additional supply, provided by administration: provided by the genius of Lord Sidmouth, who invented them; by the magnanimity of Mr. Peel, who disdained not to adopt them. They are — future exclusion of all non-barristers: ditto of all barristers of less than three years' standing. I speak here, and of necessity, of the two secretaries, late and present. For it is by Mr. Peel and his successors in that office, if by anybody, that these remedies are to be applied. Parliament is to know nothing of them: parliament is not to be trusted with the application of them.

Viewing all this wisdom and virtue through the medium of the *greatest-happiness principle* (a principle which has been accused of giving to financial objects rather a yellow tinge,) I have the misfortune of seeing the whole speech in a considerably different point of view: — (1) The alleged evils — the inaptitude, and the non-attendance — neither of them proved by it. (2) Supposing the disorder proved; the supposed remedy, parliamentary and ministerial, as above, inefficient to any good purpose; efficient to a very bad purpose; but both these evils, though not proved by the right honourable secretary, I admit, and, as it seems to me, probabilize, the existence, (3) at the same time, of both. (4) So doing, I venture to propose a remedy, which, for reasons assigned, seems to me a promising one — and the only one which the nature of the case admits of, without some change in the whole judiciary system, such as in part has been, and with large amendments will again be, submitted to the public, but which it would be altogether useless, as well as impracticable, to insert here.

Alleged Evil 1. — Deficiency in appropriate aptitude. Here I take upon me to say *not proved*. Here I am all confidence. *Subpœna* in hand, I call on the right honourable secretary. In No. 11 stands his evidence — "Present police magistrates" (per *Times*) "of the highest personal respectability." Per *Morning Chronicle* — "their knowledge, experience, and respectability," — (all thirty of them) — "and their services had already proved the importance of the duties they had to fulfil." Per *Times*, again — "They per-

formed their duties" (and *that* not only to the satisfaction of the right honourable secretary, but) "to the great satisfaction of the country."

This being unquestionable, what is become of the evil, and what need can there be of a remedy?

What a scene is here! The right honourable gentleman at daggers-drawn with himself! How to account for it? One way alone I can think of, and it is this:—the force of his eloquence overpowered his memory. While, with so much pathos, he was lamenting, on the part of a certain set of persons, the deplorable want of aptitude, — he forgot that, before he sat down, he had to deliver, in behalf of the selfsame persons, a certificate of accomplished aptitude. When at last the time had come for the delivery of this certificate, he had already forgot how large a portion of his speech had been employed in giving contradiction to it. To answer the purpose for which they are made, what must be the complexion of the assertions of inaptitude uttered with such entire confidence? They must be at once true and false: true, for the purpose of proving the necessity of the additional bonus; false, for the purpose of entitling these thus meritorious and actually existing persons (for this slides in *sub silentio*) to receive, before any of their future contingent colleagues have been in existence to receive it, a full share of the benefit of it. Admit him to be in possession of the power of giving truth to a self-contradictory proposition, the right honourable secretary proves this his *probandum*, and thus far justifies his measure: refuse him this accommodation, he stands self-confuted, and his argument is somewhat worse than none.

Were ministerial responsibility anything better than a word, the task the right honourable gentleman had charged himself with was (it must be confessed) rather a delicate one. English punch, according to the Frenchman in the jest book, is a liquor of contradiction: a compound of a similar complexion was that which, on occasions such as the present, a situation such as the right honourable secretary occupies, gives him in charge to mix up, for the entertainment of Honourable House. Except in the case of an underling whose character is too offensively rotten not to make it matter of necessity to suffer him to be thrown overboard, for all official men in general — high and low — there is but one character: a general character for excellence, tinged here and there with a little difference of colour, corresponding to the nature of the department. The idea looks as if it were taken from the old chronicles: where, with decent intervals, one portrait serves for half-a-dozen worthies: one town for the same number of towns, and so as to battles and executions. Time and labour are thus saved. This universal character puts one in mind of an ingenious document I have seen, sold under the title of the Universal Almanac. A copy of it has been supposed to be bound up with every cabinet minister's copy of the red book. Like a formula for convictions, it might be inserted into each particular, or into one general, act of parliament. Subscription to it, and oath of belief in it, in relation to all official persons whose salaries had risen or should hereafter rise to a certain amount, might be added to the test and corporation acts: and, without need of troubling the legislature, Lord Chief-Justice Abbott, or Lord Chief-Justice Anybody, would hold himself in readiness to fine and imprison every man who should dare to insinuate that any such person that lives, or that ever has lived, or that ever shall live, is, has been, or ever can be, deficient in any one point belonging to it.

Without violation of this standing *character rule*, he saw how impossible it was, that any the slightest shade of inaptitude, actual or possible, in any one of its modes, could be laid upon the character of any one of the existing incumbents. "With the character of all of them, all who heard him" (see No. 11) "were acquainted." Remain, according to parliamentary usage, the only persons with whom any such liberty could be taken — their future-contingent, and thence as yet unknown successors.

Here, however, comes something of a difficulty. Evil as above — disorder as above — inaptitude in some shape or other: remedy as above, of the preventive stamp, the £300 a-year. Good: supposing disorder or danger of it. But where is the room for it, where there is neither the one nor the other? Sole reason, the word *invidious*. Invidious it would be, and that being the case, "poor economy" — "so poor," says No. 8, "that there could not be a worse" — to refuse to those gentlemen whom everybody knows, that which will be given to those of whom, without disparagement it must be said, that they are gentlemen whom as yet nobody knows.

So much as to *aptitude:* and the alleged, and by the same person at the same time denied deficiency in it. Remains, as another and the only remaining subject-matter of deficiency, the article of *time* — time employed in official attendance. This, too, is another delicate topic. Standing so near to aptitude, and, in particular, to the moral branch of it, nothing determinate in relation to it could be hazarded: allusion, insinuation, yes: but nothing that applied to anybody. "Great increase of population." — (No. 1, *Morning Chronicle.*) "The duties of the office would require constant attendance" — (No. 5, *Morning Chronicle;*) — "almost constant attend-

ance"—(No. 4, *Times.*) Hereupon comes the same troublesome question as before. This constancy of attendance, is it not then paid by the present gentlemen? Answer, as before, yes and no: and, to secure it at the hands of their future colleagues and successors, comes the necessity of the same sweet security — the £200 a-year: this £200 a-year to be given, and without condition, not only to those unknown persons, but moreover, and in the first place, on pain of hearing the word "invidious," and bearing the stigma of "poverty," given also to the existing gentlemen, in whose instance there is so much, and so little, need of it.

So much for the right honourable secretary's two evils, and his proof of their existence. Now for his two ministerial remedies in aid of the £200 a-year parliamentary one: — 1. Exclusion of all but barristers; 2. Exclusion of all barristers but three-year old ones. Problem, which his rhetoric or his logic, or what is sometimes more powerful than both, his silence, has undertaken for the solution of — how to prove, that, by these two exclusions, added to the £200 a-year, — appropriate aptitude, moral, intellectual, and active, adequate to the situation, together with adequate plenitude of attendance, will be produced.

By this policy, he secures, to this class of his *protegés*, the aptitude, proved by the right to the name of *barrister*. Now, then, what are the qualifications, the sole qualifications, of the possession of which any proof whatever is given by the right to bear this name?— Answer — Being of full age; payment of a certain sum in fees and taxes; and, on a certain number of days sprinkled over a surface of five years, eating and drinking in a certain place, or therein making believe to eat and drink. Sum: between one and two hundred pounds; place, the hall of an inn of court; number of days, twenty in every year: total number of days, a hundred. As to the *making believe*, this option must not be omitted: nor yet the hour — four, or half-past four; for neither the hour nor the fare accord well with the taste of the class of persons for whom, it will be seen, the £800 is destined.

As if this security were not strong enough, now mounts another upon the shoulders of it. After five years employed in the above exercises, then comes a *repose* of three years more; for not less indeed than these three years more, must this class of the right honourable secretary's *protegés* have borne the name of *barrister:* but, as to the exercises of eating and drinking, if it be agreeable to the gentleman to perform them, he is no longer burthened with any limitation in regard to place. The right honourable minister, in the pathetic part of his speech (No. 4,) asks a question: May logic, in the person of an obscure individual, be permitted to do the like? Comparatively speaking (for I mean nothing more) — service for five years, (the usual time,) as clerk to an attorney, would it not be a security, though not so dignified, somewhat more efficient? The clerk could not be altogether ignorant of law, without his master's suffering for it. The master, therefore, has some interest in causing him to learn it; the clerk in learning it. But more of this further on.

The security is of Lord Sidmouth's invention: so his right honourable successor assures us: and much inferior authority might have sufficed to command belief. It is just the sort of security, that the genius of his noble and learned oracle, or of Mr. Justice Bailey, or of Mr. Justice Park, might have devised: of all these luminaries, the collective wisdom was perhaps expended upon it. For all these luminaries, the name of barrister, with three years' wear of it, was security sufficient: and, if he is sincere, Lord Sidmouth's successor looks no deeper than to names.

So much better in their eyes is a nominal security than a real one, that when a real one offers, it is deliberately put aside — (No. 6.)

The design of the right honourable secretary found the class of country gentlemen standing in its way: a class, before which ministers, not to say kings themselves, bow, was not to be lightly dealt with. Something in the way of compliment to them was indispensable; the compliment, however, was unavoidably of a somewhat ambiguous character, as, not being eminent lawyers, they could not serve the purpose. Inaptitude on their parts — relative inaptitude at least — it was necessary should somehow or other be insinuated.

As to this matter, if *absolute* inaptitude would content the right honourable gentleman, my feeble suffrage would see no very cogent reason against joining itself to his: but, as to comparative inaptitude, in the case in question — comparative in relation to his three years' old, and theretofore, *perhaps*, eating and drinking barristers, so far I cannot go with him. For, not only country gentlemen at large, but country magistrates — nay, and such country magistrates as have been in use to perform — and that for whatsoever length of time — the duties of this very office — such are those he puts from him. This being decided, for extinguishing all pretensions to appropriate aptitude on their part, the purpose of his argument required a dyslogistic epithet. *Routine* is accordingly the epithet, by which the whole of the business they have been accustomed to is characterized. Yet, make the least of it, it at any rate composes the greatest part of the business of the very office from which he is excluding them: one more look, and you will see that the business they have been accustomed to has, in the instance of many

of them, and may, if he will vouchsafe to adopt them, be, in the instance of all these children of his adoption, made to comprise the whole of it. Such being the candidates whom he puts aside as unfit for the business, what are the objects of his embrace? Three-years old barristers, altogether unused to business of any kind; unless eating and drinking, or making believe to eat and drink, is business. To a person who has never dined, or made believe to dine, at an inn of court hall, all this may seem exaggeration, to say no worse. *I* speak not only from observation, but from experience. Such is my good fortune, never as yet have I been convicted of perjury: nobody has ever given me anything for saying this: my evidence is therefore good evidence; and it applies not less to the making believe to eat and drink, than to the actual exhibition of those so perfectly conclusive, and exclusively receivable, tests of aptitude for the office of magistrate. Thus the matter stood sixty years ago, and thus, I am assured, by equally competent witnesses, it stands still. Let it not be said, the place being a law place, the conversation turns of course upon law. There being no conversation upon anything, there is no conversation upon law; for, unless you happen to be already acquainted with him, you have no more conversation with your messmate, than if he were at the antipodes.

To complete his demonstration of the superiority of his three-years old barristers without any experience, to a quondam country gentleman with thirty years of appropriate experience, the right honourable secretary brings exemplification from the building act, and tells Honourable House of a case under it which (says No. 7) had occupied "a couple of days, during which surveyors had been examined on both sides." Now, in a case of this sort, what is there that should render even an experienced magistrate less competent than an equally experienced barrister? What has it to do either with equity or with common law? Country magistrates, who, not a few of them, are themselves builders — who, all of them, are accustomed to order buildings to be built — built with perhaps a little of their own money, and sometimes with rather too much of other people's — what should hinder them from being at least as well conversant with the subject as the most learned inhabitant of Lincoln's Inn Old-buildings? Here, for law is an act of parliament, nothing more: for fact, evidence about something that should or should not have been done under that same act. The *days* thus employed, what would they have been to the purpose, if, instead of two, there had been twenty of them?

At the winding up of his speech (No. 10,) to place above all contradiction the indispensableness of the £2000 a-year, comes a trope — the word *refuse* — which seems to bid defiance to all endeavours to descry anything in it beyond the intensity of the desire to give birth to the indispensable effect.

Barristers — all barristers in the lump — are, by this figure of speech, divided into two classes: those who will serve for £600 a-year, and those who will not serve for the £600, but will for the £800. As to the meaning, it is indeed intelligible enough: not so, by any means, the grounds of it. That it were so is, however, rather to be wished: for those — all those, who would be content that the £600 a-year, public money, which the right honourable secretary is thus buying creatures with, should be saved — all those, barristers as they are, are branded with the common name of *refuse*. Such is the contempt — the undisguised, the thus loudly proclaimed contempt, in which sincerity — I mean always comparative sincerity — is held by this one of our head guardians of public morals. Insincerity is among the qualities professed to be possessed by barristers: the only one which is sure to be possessed by any of them. Now then, true it is, that no reason can be alleged for supposing, that, so far as *disposition* goes, those who get least business are behind-hand in this endowment, with those who get most: but disposition is one thing — practice is another: and the less a man has manifested of it, the more deep-drawn is the contempt which he receives on his head at the hands of the right honourable secretary, from the bucket lettered with the word *refuse*.

Meantime, here stands a strange mystery. Refuse — were there ever such a plenty of it, would the hand of Mr. Peel pick it off the dunghill, and place it on high — this refuse? Forbid it, consistency, at least. For who is it that prophesies it of him? Is it not Mr. Peel himself? But shall he be suffered thus to deal by himself? Shall Amyntas murder Amyntas?

One possible solution remains, and but one. On the part of a barrister, willingness to serve in the office of police magistrate for so little as the £600 a-year, is not merely evidence of his inaptitude for that office, but conclusive evidence. This meaning, however strange, being intelligible enough — we have thus far something tangible to examine. For, supposing none but refuse willing to serve, refuse he must take up with, or have none: and thus, it being Hobson's choice, there is no inconsistency either in his making it, or in his avowing the making it. But suppose enough willing who are *not* refuse, what matter is it how many there are who *are* refuse? Will he, then, having good and bad before him, both in plenty, take in hand the bad, putting aside the good?

The stock of difficulties is not yet exhausted. Comes now a point for him to settle with our-

tain gentlemen. Of the thirty gentlemen at present serving in this situation, *four* I see, who, by his own account (No. 11,) are serving, and for these three years, or thereabouts, have been serving, at the low price. None of them, I hope, were born in Ireland, or in the United States: if yes, there may be danger in the case. "Sir," they may say to him, one after another, "do you mean to call me *refuse?*" One consolation is, that refuse, as according to him they are (as per No. 1,) they are not the less included in his certificate (No. 6) of universal aptitude. This, with the assurance of the additional £200, may, it is hoped, soften them. Was it for this, that the £200 was extended to those in whose instance experience, if he is to be believed, has demonstrated that for any other purpose it was not needed?

One lumping assumption there is, upon which the whole strength of his argument rests. Faintness of prospect, such as to induce a man in the profession to take up with £600 a-year certain, charged with moderate labour, is conclusive evidence of his not being fit, either for the profession of barrister, or for the office of police magistrate. How brisk are the right honourable secretary's conclusions! Involved in the assumption is this — that all who have not actually a certain quantity of the business in question, or at least a strong assurance of it, are unfit for it. Now then, how stands the matter in point of fact? In a prodigious degree more than any other, this profession is always overstocked. In this same profession, the quantity of business that shall be deemed sufficient to produce a refusal of the office, with the £600 a-year — let the fixation of it be left even to him — for one who is in possession of it, there may be two, or more likely a much greater multiple of one, that are *not* in possession of it. Here then, according to his own reckoning, for one who is *not* refuse, there will be the two, the three, the half-dozen (where shall we end?) who *are* refuse: and yet, as above, of this refuse, for aught he can know, numbers there are in any proportion, whose aptitude is at the highest pitch, and who yet, if they have either common prudence, or disposition to follow so many examples as are before them, will not disdain to pick up the supposed disgraceful pittance. Let me not be accused of taking an undue advantage of an unguarded word. Substitute the tamest word the language furnishes, the arguments remain the same.

Meantime, who does not know that there are certain points of aptitude, in respect of which a man may be very indifferently qualified for making his way at the bar; and yet, perhaps, be but so much the better qualified for the exercise of the functions of the office in question, being, as they are — with Mr. Justice Bailey's leave be it spoken — the functions of the judge. Rhetoric is the leading talent of the barrister; logic, of the judge: and, between the two, the strife is not much less fierce than, according to the poet, between liberty and love.

Be this as it may, almost everybody knows — and a man must be a secretary of state, or at least a cabinet minister, not to know — that in this profession, above all others, success depends upon accident, at least as much as upon aptitude: — that it has for its proximate cause a certain opinion in the heads of attorneys: and that, if external circumstances, altogether independent of inward endowments, do not concur in the generation of this opinion, a man may unite the rhetoric of a Murray with the logic of a Dunning, and, at the end of a long life, die, like Sergeant Kemble the reporter, without ever having clasped to his panting breast the blessing of a brief.

Nor yet are we out of our wood; for still remains one topic, to thicken the perplexity. It is that of the *length of standing* — the yet remaining one of the three branches of the right honourable secretary's security for aptitude. To render a barrister an object of his choice, three years (says No. 3) must be his length of standing. Now then, of the number *three* thus applied, what was the design? — to extend the number of admissible candidates, or to narrow it? The too young or the too old — for the exclusion of which of these unapt classes was it intended? The too young, says the wording, abstractedly considered: the too old, says the word *refuse*, and the sort of argument conveyed by it. For, these are they, who, by their willingness to accept of so low a price as the £600, have given the requisite proof of inaptitude — of their despair of barrister business — and consequently of their inaptitude for the office of police magistrate. Thus incompetent, says the argument, are the old barristers run to seed. — Turn now to the three-year-olds. In the breasts of all this blooming youth, no such self-condemning and inaptitude-proving despair, can have had time to form itself. At this short standing, — unless here and there a special pleader, who has shown himself by practice under the bar, be an exception, — no practice, no expectation — consequently no disappointment. Expectation! How should there have been any? After these three years, how long (shall we say) continues the time for *junior openings*, which require nothing but a few words got by heart, and half-guinea *motions of course*, which require not even that? — sources not furnishing, upon an average, the tenth part of the supposed disdained £600. Now then comes the comparison. To these men, in whose instance, by the admission, or rather by the assertion, of the right honourable secretary, the probability is — that they have had no appropriate experience worth

mentioning, — to these men is to belong the exclusive charite of being chosen for the office, while those, who may have appropriate experience, in any quantity not incompatible with the choice of £600 a-year for life, charged with the already very moderate, and naturally still decreasing labour, which will be seen presently, — are for that reason to be regarded as being proved in hopeless degree unapt, and on that ground are to be excluded from all chance.

"But you have forgot," says somebody, "the wonder-working £200 a-year." Not I indeed. But forasmuch as, in the case of the three-year-olds, it is to create aptitude out of nothing, — I see not why it should find less difficulty in creating it, in the instance of the twenty or twenty-three-year-olds, to whose stock of the requisite materials no limitation can be assigned, short of that which is applied by an assurance of more than the £600 a-year by professional practice.

To prepare Honourable House for the reception of the above logic and the above rhetoric, right honourable secretary sets out, I see, with history. Original salaries, £400; result per *Times* (No. 2,) "incompetence:" per *Morning Chronicle*, "total incompetence." Cause and proof of the incompetence, manifest: out of twelve (the original number) barristers, no more than *three*. Being barristers, these three should naturally have produced a five-and-twenty per cent. discount from the totality of the incompetence; but *perhaps* they were of the *refuse* sort: and grant him but this, the exception, being thus only apparent, gives strength, rather than weakness to his sweeping rule. Here, too, sincerity compels me to be totally recalcitrant: major, minor, conclusion — to nothing can I accede. Incompetence, neither proved nor probabilized: power of the first £200 a-year to increase competence (supposing a deficiency of it,) denied by me: supposing it admitted, need of the proposed second £200 a-year for producing competence, denied again: the actual production of it having been so triumphantly proved by me, as above: proved by the most irrefragable of all testimony — his own evidence.

Proof of the incompetence of the original nine, — *non-barristership*. With so concise, and at the sametime so satisfactory a proof, especially to the barrister part of the audience, — at this stage of his history in union with his logic, the right honourable secretary might perhaps have done as well, had he not only begun, but ended: not much strength, it is believed, will either of these his supports receive from the particulars. The year of the establishment being 1792, — the nine are all of them, by this time, gathered to their fathers; indeed, the right honourable gentleman's urbanity considered, the sentence thus passed on them proves as much. From such a quarter, a more drastic condemnation, unless it were by the word *refuse*, can scarcely be imagined. But they had not risen (poor gentlemen!) to the rank of those, the feelings of whose surviving relatives can make claim to the protection of Lord Chief-Justice Abbott: and, if they had, it is not against a secretary of state, nor even against a member of Honourable House — speaking in his place — that it could be afforded. Instead of the sweet satisfaction of seeing fine and imprisonment inflicted on the gainsayer, — they must therefore, under their affliction, put up with such poor support, as an obscure and unpaid ex-barrister of the refuse class has it in his power to give.

With an exception (of which presently,) of no one of the devoted nine do I remember anything. The sort of *character evidence* which I have to adduce for them, is therefore none of it of that sort which is called *direct*: none of it more than *circumstantial*. Nor is it the worse for being so; for, as applied to character, the value of direct evidence, unless it be from some such person as a secretary of state, may be judged from what is above, although it is from a secretary of state.

To return to the history. — In regard to appropriate aptitude — (*competence* I cannot keep to, since it includes, not to say exclusively denotes, acceptance at the hands of those to whom inaptitude is a recommendation) — in regard to appropriate aptitude, the question is between the nine defunct and reprobated original magistrates, and the right honourable secretary's magistrates in *petto* or in *embryo* — his three-year-old barristers. Of these, as yet unborn babes of grace — offspring of the imagination of the right honourable secretary — the title to the quality of aptitude has been already disposed of: circumstantial evidence and proof presumptive of inaptitude, — want of experience in business, or, more shortly — their not being *men of business*. Now then for my nine clients. The right honourable secretary's list of them (No. 2) has been seen: major, one; clergymen, three; — (oh fie! what! after the major?) — starch-dealers, two; Glasgow trader, one. Now, with the exception of the three clergymen (whom I shall leave to those so much more efficient advocates, of whom no gentleman of their cloth can never be in want) — magistrates for whom I cannot find any tolerably presumptive evidence of their having been men of business in any way — of all the others I am bold to affirm that they had been men of business.

I will go further, and add, — nor is there any one of those occupations, experience in the business of which does not afford stronger presumption of aptitude — even in relation to the business of the office in question, than

can be afforded by an utter want of all experience in any kind of business. The major, being a major, must have passed through the several grades — ensign (or the equivalent) lieutenant, captain: and, in all of them, if commanding men by scores and hundreds is business — he must have been a man of business. The starch-dealers, they too must have been men of business; for buying and selling starch is doing business: and in that business, with whatever degree of success, they could not but have been exerting themselves, forasmuch as their subsistence depended upon it. All this, too, in addition to their having been *bonâ fide eating* as well as *drinking;* to wit, from the hour they gave up the nipple, down to the time of their appointment; which is rather more than can be alleged in favour of the aptitude of the right honourable secretary's *protegés*, unless it be the difference between the performing of those exercises at a man's own home, and the performing them in the hall of an inn of court: which difference I cannot bring myself to regard as constituting, to the purpose in question, a very material one.

I come lastly to the Glasgow trader. Being a trader, he too must have been a man of business. As such I might leave him; but, it having fallen in my way to know in what ways, and in how conspicuous a degree, with reference to the business of this very office, he proved himself a man of business, I shall venture a few particulars. This man was Patrick Colquhoun: and, unless destroyed by the comparative smallness of his remuneration, his relative aptitude has stronger, as well as more incontrovertible proofs than can, I trust, be produced, not only by the right honourable secretary's unknown *protegés* in embryo, whom even I look down upon as so many chits, — but even by the whole of the actually existing barrister-magistrates, produced by the additional £200 a-year, to whom I make my bow, whoever they may be. — Treatise (I mean) on the Police of the Metropolis, Treatise on Indigence, Treatise on the Office of Constable — and, for aught I know, others (for I have not time to hunt for them) bearing most directly upon the business of this very office. As to the first-mentioned — of the number of its editions I am afraid to speak, not having the last before me: the fifth, which I have in hand, is as early as 1797, and there must have been several others after it. Into the merits of them I cannot afford to enter, this paper not being either a *Quarterly*, an *Edinburgh*, or a *Westminster Review:* nor, if I could, could I venture to put my judgment in competition with the single word *incompetence*, from the lips of the right honourable secretary. I must leave them, therefore, to that evidence: and, if that evidence be not more probative, than any which the right honourable secretary has adduced in favour of his future *protegés*, or even in favour of their existing predecessors and intended colleagues, I must give up my cause.

Evidence of this sort in abundance must be omitted. One lot is too pointed to be thus dealt with. To this Glasgow trader, whatever may be the value of it, was the public indebted for the first addition made to the number of those offices, and the right honourable secretary for a proportionable part of the patronage, to the value of which he is thus labouring to give increase. It was the addition made by the Thames police act, 39 and 40 Geo. III. anno 1800, ch. 87. Of this business, it fell in my way not to be altogether ignorant. A bill was necessary. Colquhoun had found the facts. I ventured to supply the law. I drew the bill, leaving out as much of the customary surplusage as I durst. In the procedure clauses, for giving execution and effect to the law, I ventured as far as I durst, and further than any one had ventured before. Incompetent as the performance could not but be, coming out of such hands, change of hands rendered its competence unquestionable. At my humble request, a learned gentleman of the first distinction (I know my distance better than to mention him) received it into his, and, without the change of a word, it became law. The plan had been formed by Colquhoun, in conjunction with I forget what body of mercantile men, who wanted a sort of board of which he was to be at the head. The board they did not get: but a present of £500 testified their sense of his competence with relation to police business. Such was the nameless Glasgow trader: his name would not have been quite so suitable to the right honourable secretary's purpose, as it is to mine.

As to the three clergymen, leaving the question as to their incompetence to be settled by the honourable secretary with the archbishops of Canterbury, defunct and living, the lord chancellors, and the several lord lieutenants, I proceed to the remaining one of the two evils, for which the second £200 a-year, as provided by him, is to operate as a remedy. This is — the deficiency in the article of *time:* the deficiency, if any, present or future, in regard to the quantity of time employed, or eventually about to be employed, by the magistrates in question, in the fulfilment of their duties.

On this evil the right honourable secretary touches, it should seem, with rather a tender hand: allusion and insinuation, rather than assertion, are the forms of speech I see employed. (Per No. 1) — In the business "great increase:" cause, ditto, partly in acts of parliament, partly in population. Triumphant tenders of papers in proof of all these facts,

— to which might have been added, the existence of the sun at noon-day.

Of the existence of the thus delicately-assumed evil, — at the hands of the right honourable secretary I look in vain for other proof. From that most authentic source, somewhat less explicit is the evidence I see to the contrary. It is that which has been already seen: it is made of stretching leather: it is wide enough to be applied to whatever can be desired. By the thirty gentlemen — (who, it has been seen, are at once so competent, and, for want of the £200 a-year, so incompetent) — these duties, as per No. 11, are performed to the great satisfaction of the country; and this, notwithstanding that, as per No. 4, to prove the necessity of the barrister part, almost constant attendance, he says, is required. Required? Good. But *by whom* was it, or anything like it, ever required? — a question somewhat more easy to put than to answer. By any such attendance, or anything like an approach to it, the place would be spoilt, and no gentleman would accept it: acceptance would of itself be proof of incompetence.

Now then, forasmuch as, in this office, according to the right honourable secretary's opinion, an "almost constant attendance" is required, and accordingly forms part and parcel of its duties; — and forasmuch as, without exception, these same duties are, according to this his evidence, actually performed — performed not merely to *his* satisfaction, but to the satisfaction of the country: — forasmuch as, I say, evidence of the existence of this one of his two evils, is, notwithstanding the prodigious pile of papers, with the mention of which he at once alarmed and satisfied the House, still to seek; — for this deficiency, though it is not in my power to provide a supply, it is not, I flatter myself, altogether out of my power humbly to point out a course by which he may obtain it. True or false, newspaper statement is unofficial statement: unofficial statement is not admitted in evidence, even when no man in Honourable House doubts, or will venture to express a doubt, of the correctness of it. Honourable House knows better than to admit, through such a channel, anything, however well attested, in the character of evidence. Yet are such statements, — unofficial and incompetent as they are, — made use of, every day, in the character of indicative evidence, for the elicitation of acknowledged evidence. This premised, I shall venture to copy from a newspaper a portion of a paragraph: humbly observing, that in every one of the offices in question there exist various persons, from any of whom, if it be agreeable to know it, Honourable House, and in it right honourable secretary, may learn at any time, whether, in this same newspaper statement, there be any and what portion and degree of truth, and how far the actual agrees with their "required constancy of attendance."

"We believe," says the *Globe and Traveller*, as quoted in the *Examiner* of March 27, 1825 — "we believe a magistrate attends at each of the offices from twelve to three, and looks in again in the evening. There are three magistrates in an office, so that this duty is imposed upon each of them *twice* a-week. We know that there is some business for which the *presence* of two magistrates is necessary; but it is to be recollected, that at almost all the offices, *volunteer* magistrates are frequently in attendance. We are convinced that a very large statement of the time each magistrate needs be in attendances is — every other day, three hours in the morning, and twice a-week, two hours in the evening."

In regard to this evil, if anything that comes from so incompetent a quarter could be heard, I could, I think, do something towards tranquillizing the right honourable secretary. Aptitude is not quite so easily secured as asserted. But *attendance* — the maximum of possible attendance — every master-man, how humble soever in condition — every master-man that really desires it, has it. To the extent of his desires, the right honourable secretary has it in his own individual office. With the assistance of Honourable and Right Honourable House, to the same extent he may have it in the instance of every other public office without exception. If, then, in any instance, and in any degree, he fails to have it, it is because he does not desire, not because he is not able, to obtain it.

You may maximize attendance, and you may minimize it. The maximization problem has been solved, and with illustrious success, in the case of the children of the indigent, when worked upon a steam scale. As some are killed off, others succeed: and capital — the one and the only thing needful — accumulates. Examined in his place, or elsewhere, one honourable member of Honourable House could give, on this point, if I have not been misinformed, instructive information. His name, if I mistake not, begins with a P.

Those whose will it is to minimize attendance might, if in the above newspaper report there be any approach to truth, receive instruction, if it be worth while, by applying to another P., no less a P. than Mr. Secretary Peel. But it is not worth while: those who understand nothing else, understand this. Everybody, man and boy, knows how to be idle — every man knows what it is to stand looking on, and helping, while others are idle. Every man knows what it is to pay, as well as to be paid, for doing work, and all the while seeing and leaving it undone. Other arts travel at their different paces. Under

Matchless Constitution, the art of sinecurism is at its acmè.

In my small way, I have a manufactory of my own, in which, with the same sort of instrument (imagination) with which the right honourable secretary has manufactured aptitude in the instance of his three-year-old barrister-magistrates, and for my own amusement (as a half-retired chimneysweeper swept chimneys) I make judges. My judges are judges of all work, and of all hours. They do not, it is true, sit, each of them, every day in every year, and on every day, every hour of the four-and-twenty; but, in each judicatory, they, following one another, do all this. *When sleeps injustice, so may justice too*, said a voice to me in one of my dreams. My muse is but a hobbling one: — she has not been to school to the laureate's: the *too* is somewhat of a botch: but I remember her so much the better. In one thing I endeavour to copy the right honourable secretary's noble and learned friend — it is the quality so judiciously selected for his eulogium — consistency. The ends to which my judicial establishment, and my procedure code, in conformity to the constitutional code to which they belong, are from beginning to end directed, are the ends of justice: under Matchless Constitution, the ends to which the judicial establishment is, and the procedure code, if there were any, would be, directed, — are the ends of judicature. What these are, it is not for me to presume to inform the honourable secretary: over and over again he must have heard them, amidst peals of laughter, or floods of tears, from his learned and matchlessly-consistent friend, before or after the second bottle.

Such being the bill — such the ostensible and declared objects of it — such the evils asserted or insinuated — such the remedies provided — such the arguments employed in proof of the evils, and in recommendation of the remedies — what, after all, is the real object? The topic must not be omitted: though to few of the readers, if any, whose patience has brought them thus far, can anything on this head be regarded as much more needed, than were the honourable secretary's proofs, of increase of population and acts of parliament.

Loss, by waste of public money, is in every instance an evil: in the present instance, loss in the article of aptitude is, in my view of the matter, a still greater evil. To the augmentation of aptitude, perfectly inoperative will be the £200 a-year: not so to the diminution of it. £1000 a-year is a salary for a nobly related puisne, at one of the highest boards. I am fearful of mistakes, and have no time for researches. When red books had the salaries to them, £1000, if recollection does not mislead me, was the number attached to the office of Puisne Admiralty Lord.

In the heaven of office, there are many mansions. Of a Police Magistrate, the station cannot be altogether upon a level with that of an Admiralty Lord: but the £200 a-year will raise the lower office to a level next below that of the higher one. To a reverend youth — even to one born honourable — a spiritual benefice yielding £800 a-year is not altogether an object of disdain: — eased, as above, of labour, though not so perfectly as in the other case, why should even this temporal one? Without some improvement, *attendance* is a burthen the lay incumbent can not be altogether eased of: *thought* he may be eased of without difficulty. When two magistrates are necessary, there must be a non-honourable to yield *thought*, but the honourable will serve as well as the non-honourable to yield *auspices:* when one magistrate suffices, the dignity of the honourable man will need no disturbance. But, the only case, in which burthens so degrading to honourable men will require to be imposed, is an extreme case. Naturally speaking, there will in general be unpaid magistrates enough, to whom, for the time and trouble of attendance, the power and the amusement will afford sufficient compensation. One of these *suppléans*, the non-honourable, takes care to provide, each time, for his honourable friend and colleague. Thus is the labour of the honourable minimized: and, sadly have his non-honourable colleagues been deficient in what everybody owes to his rank, if the quantity of time actually employed in official duties is anything more than an impalpable one.

Here, then, in short, comes the effect and use of this second £200. The first did not bring the place within the sphere of the highly-connected class: the hope is—that the second will: it will, at any rate, form a basis for a third.

> "What makes all doctrines plain and clear?
> "About two hundred pounds a-year."

So stood the matter in Sir Hudibras's time. But now the £200 must have an ever increasing number of others to mount upon.

Seldom, if ever, do I endeavour to overthrow, without endeavouring at the same time to build up. For maximizing the chance in favour of everything needful, I have a recipe of my own, and that exemplified upon the largest scale; the principle of it will be found in another part of this volume, or in one that will soon follow it. Alas! what hopes can there be for mine? It is the very reverse of the right honourable secretary's. It may serve him at any rate to laugh at. *His* plan excludes experienced magistrates, admitting nobody but nominal barristers. Now then comes the laugh:—the most efficient and approved of House of Commons arguments. *Mine* admits nobody but experienced magis-

trates; excluding barristers, nominal and real all together.

My plan serves at once for aptitude and attendance. As to aptitude, — for *that* I require, as a qualification, previous admission into the magistracy, and thereafter, unpaid, but constant and adequately proved attendance, at some one of the existing offices; attendance for a certain length of time, say five years: to wit, when from the commencement of the plan that length of time has elapsed, and till then for as great a length of time as can be had.

Now for a contrast, between my experienced magistrates, and the right honourable secretary's unfledged barristers — adding, if so it please him, any number of grey-headed ones.

1. As to moral aptitude, my magistrates will have been engaged in the exclusive support of *right* — or at least of what the *legislature* has pronounced *right*, — and the exclusive repression of *wrong* — or at least of what the *legislature* has pronounced *wrong*. His barristers will have been occupied either in nothing at all, or in what is so much worse than nothing, promiscuous defence of right and wrong, with the universal predilection for wrong, as being the best customer.

2. As to intellectual aptitude, composed as it is of appropriate knowledge and judgment, my magistrates will, for the whole of their unremunerated length of time, have been employed, on the very spot, in study, and occasionally in practice, in the very field for which it is proposed to engage their remunerated services; in the whole of that field, and in no other than that field, to their consideration will have been subjected, in all their varieties, all sorts of cases which can have grown up in that same field. The right honourable secretary's barristers, with their £800, instead of £600 a-year, — how will they have been occupied? My answer has been seen already. The right honourable secretary's answer the country will be grateful for, if he can find any. But they may have been not only barristers, but barristers in full practice, and all the while not knowing anything more of the business of a police magistrate, than if they had been all the while fighting as army officers. Of practising barristers there are about as many equity as common lawyers. Now, in a police magistrate's practice, what is there that has anything in common with equity practice? Let him bestow a glance on the table to *Maddock's Equity*, and then on the table to the last edition of *Burn's Justice*, or whatever work has now supplanted it, and see whether this is not strictly true. To those abstracts I venture in kindness to refer him, long as the road through may seem to be, as being shorter than through the mazes of his walking dictionary. Those he might get by heart, sooner than an intelligible answer from his oracle; a negative the oracle would not venture to give, and an affirmative he would not choose to give.

3. Lastly, as to appropriate *active* aptitude. On the part of my magistrates, it would be a maximum. By every motive they would be impelled to render it so. At the hands of the barrister, what his right honourable patron does not require, is activity in any shape; all he does require, is existence.

As to attendance, and the means of securing it, to a great degree it is already comprised in the active aptitude just spoken of. But, in whatever possible degree he chooses to have it, he may have it if he pleases: nobody who does choose to have it, ever fails of having it. I will not attempt to trouble him with particular proofs, as they are already in one of my waking dreams.* In manuscript they are already in another or two, and will ere long be in print, if I live.†

This plan would suit both classes. The expectant stipendiaries would not be disinclined to attend, since it would increase their chance of the preferment; the existing stipendiaries would not be disinclined to be *attended for*, since it would increase their ease. How much soever superior the £600 a-year ones may be, to their exploded predecessors the £400 a-year ones, — were they to leave the burthen of the day altogether to the still superior expectants, if such they should prove, the public would not, any more than these same parties, have, in this quiet arrangement, any reason to repine. Ahab had served Baal a little. Jehu hath served him much. What prospect have I not opened! — what an Epicurean heaven! Thirty £600 a-year places, and all sinecures! So many temporal prebends and canonries! With such a *pot-pourri* of sweet arguments, what is there that could not be proved? Laughable and delectable all this — True: but would it be the less beneficial? Not it, indeed. — See Horace's Reports. *Ridentem dicere*, &c.

Suppose not that it is upon this £6000 a-year alone that all this examination has been expended. The expense is but as a drop in the bucket. The reasoning on which it is supported is no such trifle: if good for £6000, not less would it be for £60,000, for £600,000 or £6,000,000. More than even this might, if duly looked into, be seen perhaps to stand upon no better grounds. Be this as it may; by any one in whom curiosity is strong enough, it may be seen how admirable a match it

* Draft of a Judicial Establishment for the use of the French National Assembly. *Vide* Vol. IV. p. 285, *et seq.*

† 1. Constitutional Code, Judiciary Part. 2. Procedure Code, preceded by the Judiciary Part of the Constitutional Code.

makes with that, on the ground of which Burke for the Whigs, followed by Rose for the Tories, proved, as another part of this volume will show, the necessity of draining, out of the pockets of the productive classes, the last drop of the matter of wealth that could be squeezed out of them, consistently with the continuation of their existence. Practice, it is true, cannot be always rendered altogether co-extensive with theory; but whether the theory actually pursued as a law by government, under the really existing form of government, and under the fictitious entity, called the *Constitution*, is not the thing actually avowed by both parties, may be seen without other trouble than the turning over a few leaves.

Mr. Martin, if eyes or *Morning Chronicle*, April 2, 1825, do not deceive me, — Mr. Martin of Galway, treading in the right honourable secretary's steps, and with a copy of the above speech, I presume, in his memory, — stands engaged, on the 12th of May, to extend his protection to judges, and I know not what besides. While his protection was confined to the helpless and persecuted part of the creation, I followed the honourable gentleman at an humble distance. But, if nothing will serve him but the extending it to those bipeds with gowns and wigs, instead of feathers, whom I had almost called v——n, which would have been as bad as *refuse*, — to those whose every-day occupation is depredation, and every-day-employed instrument a lie, — here I feel it impossible to go on with him. Were it my good fortune to be honoured with his confidence, I would beg him to stop where he is, and not suffer a hand admired (and vainly endeavoured to be made ridiculous) for its beneficence, to be converted into a cat's-paw: let those (I would say to him) let those who are to eat the chesnut, put paws upon pates, and beg for it.

Let me not be mistaken. When I had like to have said v——n, what I had in view were fee-fed judges: the only sort, alas! which Matchless Constitution has yet bred: men, to whom, and so much more than to the man of finance, we are indebted for the so little less than universal denial of justice. If, instead of adding, he would substitute salaries to fees, I would consent to shut my eyes against the amount, howsoever extravagant it might prove.

The fees to be compounded for would have been — not only the fees avowedly extorted, but the unhappily so much more abundant stock surreptitiously received: received by these so erroneously supposed uncorrupt hands. They would be — not only the fees exacted by superintendents in their own name, but all those exacted under their authority, by respective subordinate holders of offices, of which they have the patronage. For, who is there that does not know that an office in a man's gift has a no less decided marketable value than an office of the same emolument in his possession? True it is that, compared with the value of the possession, the value of the patronage may be to any amount less: not less true is it, that it may also be, and that it not unfrequently is, fully equal. Let Lord Eldon say, how much less worth to him the many thousands a-year he has put into his son's pocket are, than if it had been his own? Let Mr. Peel, if he feels bold enough, look into the documents, and tell us, in his place, how many those thousands are.

To the number of the offices, the emolument of which a man can pocket with his own hand, there are limits: to the number of the offices, the emoluments of which he can thus pocket through other hands, there are no limits; and, in any number of instances, the *protégé's* life may be worth more than the patron's.

Who is there that does not know, that the value of an office to the incumbent is directly as the emolument, and inversely as the labour? Who is there that does not know, that to the patron the value of it is directly as the inaptitude of the *protégé* he has it in his power to put in and keep in it, since the more consummate this inaptitude, the less his choice is narrowed? Who is there, for example, that does not know, that it is to the union of these two characters that spiritual offices in particular are indebted for their transcendent value? Who is there that can deny, that while this mode of payment lasts, interest is, in all judges, at daggers-drawn with duty? — that it is from this cause that suits take up as many years as they need do hours, and as many pounds as they need do pence?

Who is there that can deny, that it is from this cause that our system of judicial procedure is what it is? — and that, through the whole texture of it, — judges having been the manufacturers, — delay, expense, and vexation, having been maximized, for the sake of the profit extractible out of the expense?

Yes: by such hands made, to no other end could it have been directed.

The Chief-Justice of the King's Bench, has he not the nomination to the keepership of the prison named after his judicatory? If so, then to the profits of the bench are added the profits of the tap: and the money which justice would have returned to the hands of the creditor, is extracted, through this channel also, into the pockets of the judge.

Same question as to other chiefships, — whether, as between one and another, consistency in this respect, or inconsistency, is the rule: also of that which is about to be squeezed by jailor out of debtors and creditors, how much is, in advance, squeezed out of him by judge? questions these, none of them

surely unfit to be put by Mr. Peel before he gives his support to the advocate of innoxious beasts and pre-eminently noxious judges.

Originally, though pregnant with depredation and oppression as it could not but be, payment by fees was matter of necessity: for judicature was necessary before kings had money to pay salaries.

For these three-and-thirty years past, it has been without excuse. The corruption continued, has been continued with open eyes.

When the trade of *trading justices* was put an end to — (this was the name then given to Middlesex magistrates) — it was undoubtedly for this same cause; it was because, in their small way, they made and protracted suits, for the purpose of multiplying fees.

When this small branch of the trade was put an end-to, it was by the selfsame remedy I am now venturing, with how little hope soever, to propose. So far as concerned corruption, success could not be more complete. Salaries were substitutes to fees, and in that form the plague ended.

When fees had thus given place to salaries, what disorder there was took an opposite turn. While the fees flowed into the judicial pocket, there was too much activity; now that, if any come in, they take a different direction, if report is to be believed (see above, p. 336,) there is not enough of it. Lethargic, not excitative, is now the character of the disease. Beyond comparison more mischievous than the lethargic is the excitative, though, when the specific is applied, so much easier to cure.

If in the case of the trading judges called *magistrates*, the remedy was needful, how much more bitterly needful is it not in the case of the trading judges called *judges!* — Look to mischief, profit, temptation, check: Look to the two fields of mischief; take measure of their extent.

Under the *trading justices*, the delay manufactured may be reckoned by *days:* under the *trading judges*, by *years*.

Under the *trading justices*, expense imposed on suitors may be reckoned by *shillings:* under the *trading judges*, by hundreds and by thousands of pounds.

Of the jurisdiction of the trading justices, local field, Middlesex, with or without the now added three other home counties; of the trading judges, England: local field, in both cases, far too irregular for measurement. Chaos bids defiance to the theodolite: what is sufficient is — that in the case of the trading justices, the sum of the scraps is a trifle, compared with what it is in the case of the trading judges.

Under the trading justices, the *profits* of the trade may be reckoned by *hundreds* a-year: under the trading judges, by more than as many *thousands*.

Honourable gentlemen, — will they always be so weak as to believe, or so transparently insincere as to pretend to believe, that while the temptation afforded by the *hundreds* was irresistible, the temptation afforded by the *thousands* was, is, or can ever be, without effect? Mr. Peel, — does he believe this? His noble, learned, and consistent friend, who, if you will believe him, is purity itself, — does *he* believe this?

Honourable gentlemen, — will they always believe, or affect to believe, that it is in the power of a masquerade dress to change man's nature, and that a contagion, which a coat could not resist, has been, and is, resisted by a gown with a strip of fur sewed to it? Mr. Peel, — does he believe this? The noble, learned, and consistent friend, who is faith as well as purity personified, — does he believe this?

So much for mischief — profit — temptation. Now as to *check*, in one sense of the word, *responsibility*.

The trading justices had judges over them: judges, by whom, — if haply, in an extreme case, money could be raised sufficient to buy a hearing for a cry for punishment, — they might be punished: — judges, who, though not fond of punishing any man with a king's commission in his pocket — might thereupon, by fear of shame, be peradventure driven so to do, if the case were flagrant.

The trading justices had judges over them. To any practical purposes, the trading judges have none: head of them all is the Lord Chancellor: head over himself is Lord Eldon: over Lord Eldon in Chancery, Lord Eldon in the House of Lords. Charge him with creation or preservation of abuse — of delay, expense, vexation, uncertainty — motive, either none at all, or the profit upon the expense; — he names the inquisitors by whom the inquisition is to be made. The rehearsal of this farce has been performed. When the curtain comes to be drawn up — if there be hardihood enough to draw it up — will the plaudits of a plundered people welcome it?

Remains still untouched the effective responsibility. Impunity wanted much of being complete in the case of the trading justices: it wanted nothing in the case of the trading judges. Here the word *responsibility* is mockery. Action, none — indictment, none: — pretence of impeachment, a cloak: — consistently with legislation, impeachment is physically impossible. Time would suffice for rendering it so, even if accusers were to be found, and where is the inducement for accomplices to be become — some of them informers, others of them judges?

Thus much for impeachment. Address of both Houses is impeachment under another name.

Trading justices never *made law*. The trading judges have always made it, continue to make it, and, so long as the pretended

law-makers suffer them — which they find no small convenience in doing — will never cease making it.

Yes: made it they always have, and, above all things, for the sake of the trade. Accuse them — you do so in the teeth of a law made by themselves to punish you for it. The counterfeit and judge-made law is even more effectual than a real one would be: for, on each occasion, it is moulded at pleasure: moulded by those who, having made it for the purpose, execute it.

Were I to see a judge taking a bribe — should I tell of it? Not I, if I had common prudence. The person punished would be — not the judge for taking the bribe, but I for telling of it.

Thus, and hence it is — that, on the part — not only of all judges, but of all whom they delight to favour — including all whom "the king delighteth to honour" — virtue is consummate, character immaculate.

But why talk of imaginary things, such as *bribes*, when by the real things called *fees* — fees made lawful by those who pocket them — the work of corruption — of sure and self-corruption — is carried on; carried on in open day — carried on without fear or shame — in the face of the so long plundered, and, though so often warned, yet still deluded people?

No: never surely was grosser delusion than that by which English judges are exhibited as models of uncorruption. In whatsoever shapes they could practise corruption without danger, they have always practised it: and of this practice, their system of procedure, composed of depredation and denial of justice, has been the fruit. Never (it is said, and truly) never was English judge known to take a bribe. No, verily; for how should he? Bribery requires two: a receiver and a giver. Receiver a man cannot be, without putting himself into the power of the giver. Since Bacon, no English judge has been weak enough to do so; and so there can be no receiver. This is seen by everybody: and so there can be no giver. What, in England, should induce a judge thus to expose himself, when, without exposing himself, he gets more in abundance than, in any other country, judge ever did by anything he could do to expose himself? What should induce him to take, of this or that man, with fear and trembling, money in the shape of a bribe, — when, by money exacted by taxes, levied on all men without distinction, by force of a law made by his predecessors, or perhaps by himself, — he is permitted, under the name of *fees*, to pocket more money than judge ever received elsewhere in the shape of bribes? Give a man whatsoever he would steal from you, you may prevent his stealing it: whatsoever a man desires to exact, give him power to exact it *by* law, you may prevent his exacting it *against* law. Of this sort is the antiseptic, the infallibility of which has received such ample proof in the case of English judges.

As to bribery so called, what is the real preservative against it? Publicity: — that most efficient and sole safeguard, which these incorruptibles ever have been, and even now, with the eye of the public full upon them, never cease labouring to destroy. A judicatory on which life and death depend, is not (if you will believe Judge Bailey) — is not a *court of justice*. Why? because if you will admit this, a certain quantity of nonsense, with the word *prejudging* in it, may suffice for keeping the doors of it closed. Admit this, and you may see the doors of the Westminster Hall judicatories equally closed: — give them this, you may do anything with them: with as little ceremony, they will be ready to give up their own title to the appellation of *courts of justice*. Were they so to do, no contradiction would the position receive from me: all I should object to is, the practical conclusion drawn from it.

With Lord Eldon you will have little difficulty. He has long been working at the change. So frequently open are the doors of his closet, — to shut the door of his hitherto mostly open court, will be, one of these days, a motion of course. They may, however, be thrown open now and then, for occasions of parade: whereupon Bar will be seen arguing, while Court writes dockets, reads letters, or takes a nap.

A kindred and eminently convenient policy is — the giving to chambers of judicature such a size and form, that no *lay-gents* can find entrance. True it is, that by this device, ingenious as it is, the guardian influence of the Public-Opinion tribunal cannot be entirely destroyed; for lawyers cannot be altogether prevented from becoming writers, and betraying the secrets of the court. It may, however, by this means, be in no inconsiderable degree weakened. How much more effectual instruments of this policy brick and mortar are, than rules of court can be, is no secret. All that rules could do, is the rendering admission difficult: properly placed, brick and mortar render it impossible.

English judges incorrupt indeed! Those who talk in this strain, what is it they can mean by it? Did they ever see or hear of a judge who was not completely at the *command* of the corruptor-general? Places for sons, daughters' husbands, nephews, nieces' husbands, friends, and friends' friends — and, to crown all, coronet for self. None of these things are bribes: True, but are they the less irresistible? — are they the less corruptive? But why speak of *command*? Far short of the real strength of the corruption — of the

corruptive longings, and consequent courtings, and consequent compliances with presumed desires, — comes the view which that word gives of it. From any such superior, to any such subordinate authority, no such explicit expressions of will ought to be, none accordingly ever are, issued. Issued? To what end need they be? In a situation of that sort, is there a judge, is there a man, that needs to be told, what will displease, and what will please? To stand assured with sufficient certainty, not a step need any man stir from his own *home*.

Take, for example, the case of John Hunt. Among the titles of Majesty in this country, is that of *most excellent*. John Hunt, in his *Examiner*, says things which go to impugn that title. Lord Chief-Justice Abbott punishes him for this, with loss of £100 under the name of fine, and £90 under the name of *costs*: *costs*, of which the honourable house could know at any time, if it chose to know, whether anything, and if anything, how much, directly or indirectly, goes into the pocket of the Chief-Justice.

Now, then, of the thus punished words, wherein consisted the mischief? "Oh," says his Lordship, or somebody for him, "the feelings of the King were hurt by them." Hurt by them? How so? This same hurt — how came his Lordship to be so sure of it? This same Majesty that now is — did he ever tell him of it? — did he bespeak any such punishment? No: the questions answer themselves. To be thus assured, his Lordship had no further to look than into his own learned breast, and there he saw them; for, in that repository of fine feeling, what he could not fail to see clearly enough is, that had it happened to himself to hear a man speak in any such strain of his Lordship's father, he would have been indignant, and not sorry to see the blasphemer punished.

By the king that now is, or by anybody for him, does Lord Chief-Justice Abbott, or Lord Chief-Justice Anybody, need to be told, that obsequiousness to crowns is the road to coronets?

So much for power and glory. Now as to money. If ever there was a judge, on whose incorruptibility the sound of the trumpet was loud, it was the late Lord Camden. His lordship was Lord High Chancellor. His son, on pretence of telling out public money, got out of it an income, which, when he gave it up (a bow upon paper is due to him for it) was worth £27,000 a-year to him. So much for corruptive intercourse, in a case in which it is not bribery. Now for a case in which it would be bribery. Seven-and-twenty guineas in hand, suppose George the Third saying to the Lord Chancellor — "In this suit (naming it) which I have against such an one (naming him) give judgment so and so, and I will give you these seven-and-twenty guineas," — would his lordship have taken it? Oh fie! fie! what a thought! — this would have been no better than bribery. Multiply the twenty-seven by a thousand — multiply the product by so many years as the income lasted, — and, though assuredly nobody said what nobody had any need to hear, all is consummate purity.

So much for motives, and the influence of them on conduct: to know which, for the purpose of legislation, which is the purpose *here* in question, never do I look to anything but *situation*: of individuals I know just nothing, which is just what I want to know. Now as to mischievousness. Of the law thus made, the effect is, and, if it had any, the object was, to establish punishment for everything that can tend to place in an unfavourable light the character of any king that ever lived; while the whole treasury of reward is applied to the purpose of placing those jewels in the most favourable light possible. Probative force of the evidence being in both cases the same, suppression of evidence in favour of one side, is in effect exactly the same thing as forgery of it in favour of the opposite side. Mischievousness of the practice the same in both cases; wickedness of it the same, though the people as yet have not sufficiently learnt to see it.

Keep in force this law, and with a steady hand give execution and effect to it, — the will of Holy Alliance is done, and history, from being the food, is converted into the poison of the mind. Yes, all history. First, as to the supposed injured dead. The protection granted to the manes of the third George, shall it be refused to those of the second, or those of the first? If yes, at what point, if at any, in the line of ancestry, shall it end? Then as to the supposed injured living: if thus wounded by the aspersions cast upon his royal father, can the king that now is be indifferent to any such, or any other aspersion, cast upon his princely grandfather, his royal great-grandfather, or his first ducal, then royal great-great-grandfather, &c. &c.? If not, then up go we to Egbert and to Fergus, and so on, through Woden, to Japhet and to Adam. At which of all these points does royal tranquillity commence? — that degree of tranquillity which will suffice to render truth and history unpunishable?

In this case, by-the-bye, may be seen, as well as in so many hundred other instances, how much more useful *judge-made* law is to parliament itself, — constituted as it is, and looking to the ends which, so constituted, it cannot but look to, — than even its own *parliament-law* could be made. Parliament itself, would it thus dare to destroy the truth of history, and cut up political science by the roots? But innumerable are the things of this sort

which it does every day by the hands of judges; and which fear or shame would keep it from doing by its own.

These things (unless the last-mentioned one be an exception) being so manifest, and so almost universally acknowledged to be true, that, on account of their notoriety, the very mention of them is tedious, — what less can follow, than that to all purposes to which corruptness is to the greatest extent mischievous, a state of constant corruptedness is the state in which every judge has been that ever sat upon the English bench?

In cases between king and subject, in which the mischief of it consists in giving countenance and increase to depredation and oppression, for the benefit of his monarch, his associates, and dependents, — the disease is incurable: its root is in the form of government. But in suits between subject and subject, in which the mischief consists in giving countenance and increase to depredation and oppression by judges (the present judges at all times excepted, whatever they have been, are, or will be) for the benefit of judges, their associates and dependents, the disorder is not incurable.

A few words more as to the remedy, but for which the disease would not have here been mentioned. The principle has been seen. The public are indebted for it to Lord Colchester. His was the original Middlesex police magistrate act, 32d Geo. III. c. 53, anno 1792. Time enough for amendment, the bill found its way, somehow or other, into my hands. Time for scrutiny I could not afford. My approval was pure and simple. Sheridan opposed it in Honourable House. Objection, increase of patronage — a Whig complaint, never grudged when non-redress is sure: a few words might have dissipated it, but they were words that could not be heard there. Subject of the objection — either the *source* of the delegated power, or the *quantum* of it. Applied to the *source*, the objection (an unanswerable one) went to the form of government; it applied to every part, present and future, of the official establishment; applied to the *quantum*, it supposed a certain quantity of corruption needful: and, as such, requiring to be protected from censure by the word *influence*: all above needless; and, that it might be game for the Whig hunt, licensed to be hallooed at by its proper name. Applied to every future addition to the establishment, the objection sought the exclusion of every good, to the introduction of which, — and the perpetual continuance and increase of every evil, to the diminution of which, — any such addition should be necessary.

No such desire as that of applying a bar to the increase — to the addition of corruption to influence — was really entertained. In Honourable House, the disposition to keep influence within its bounds, whatever they were, had place or it had not. If no, objection to increase was useless: if yes, cancelling an equal quantity of sinecure would afford the same general security, without depriving the public of the benefit of the particular measure.

To return to the true remedy: it was a specific. In the finance committee of 1797 and 1798 — the groundwork of such an economy as the form of government admits of — Lord Colchester applied it, and with success, to some of the administration offices. It stopped there. Judicial corruption was in an ark too sacred to be touched. In both Houses, whatsoever was learned would have been in a state of insurrection. Learned lords were above shame. Ministers were not above fear: so there the reform rested.

Since then the public mind has made some advance: whether sufficient for the substituting of justice to depredation and corruption, time will show.

To return to Mr. Martin and his new *protégés*. By his humanity he got nothing but ridicule: from his liberality he may hope better fortune. No honourable gentleman, who, for self, son, brother, cousin, or friend, has ever refreshed his eyes with a glimpse of the remuneration fund, can consistently harbour a doubt of the insufficiency of it. Whigs form no exception: for, though possession is not theirs at any time, expectancy is at all times. In the maximization of expense, it unites them in interest with judges. With what aspect they behold the county courts bill may be seen without looking at their eyes. Saving to suitors would be robbery to these their protectors, while in the patronage they have no share. Everything they say against it — everything they can seek to clog it with — is a certificate in favour of it. A measure with this object cannot have a stronger one.

By this his liberating scheme, who knows how many supporters he may not have brought over for his humanity scheme? How profound soever their contempt for their betters (for, when educated, as they sometimes are, and always may be, quadrupeds have the virtues without the vices of featherless bipeds) how profound soever their contempt — how complete soever their indifference — men's hatred for these animals, can it, to any considerable extent, be greater than their love for themselves?

As to his instrument of purchase — his announced vermin-gorging bill — he could not have chosen a more promising one. This measure is of the number of those, which even an opposition member may be admitted to carry, and in which success can scarce be dubious. Reasons are ready stationed in each honourable breast. They stand upon a rock; and *calculation* is the name of it. What will my share of the annual charge amount to? A few half-pence a-year — what I toss now and then to a beggar to get rid of him when he is

troublesome. Thus much on the debtor side: now, *per contra* creditor. So many more thousands a-year for my son, my nephew, my cousin, or though it were but my cousin's cousin, when his time comes, which it can scarce fail to do, for taking his seat in a certain place. For, calculation being settled in the head, then, from hand or lungs, comes the substance of the universally-received economico-mathematical truism — official aptitude is in the direct ratio of ditto remuneration: — a proposition, which, to render it really true, requires nothing but the substituting to the word *direct*, the word *inverse*. Thereupon comes a flower or two, such as the right honourable secretary's rhetoric has just been seen scattering over the subject: — virtue, displayed and appealed to, generosity: dignified virtue displayed, in the penetration manifested, by seeing through the cloud which the word *economy* (pronounced with a shake of the head — "*poor economy!*") had, in the head of vulgar ignorance, thrown over the question. Natural and customary result, — "hear him! hear him!" from all quarters. Is anything ever said on the other side? If yes, it is for form's sake, with a sort of faint, and as if self-condemning tone; nor even this but under the most satisfactory assurance, that the measure will not be hurt by it.

While upon this ground, I cannot pass over altogether an error — for such I am persuaded it is — on the part of Mr. Peel, as to a matter of fact, and which remained unnoticed before, because foreign to the purpose. In England, according to him (No. 8,) judges are worse paid than "in almost any other country in the world." Not that, even if admitted, the fact would serve his purpose: it would run counter to his purpose. For, if not the only incorruptible, English judges (so almost everybody has hitherto been in the habit of saying) are of all in the world the most incorruptible. Well then — this incorruptibility — forasmuch as by what you are paying for it you have got it already, — why pay anything more for it? This question would be unanswerable, were it not for the argument *ad verecundiam:* men, who perform so charmingly, can you be so ungenerous as to let them serve at an under price, when it would be so easy for you to give them a fair price? The argument is worthy of the nursery, and perhaps has been inherited from it. The child is gorged with meat, but spies out cake, and cries for it. "Dear sweet poppet!" says grandmother to mother, "can you be so hard-hearted as to let it cry on, only to save a little bit of cake?"

So much for argument: now for fact. Talking with a Frenchman t'other day on this subject, £50 a-year, he assured me — £50, and no more, is the salary of that class of judges, by which by far the greatest part of the business is done. "Well, but don't they take bribes?"—"No such thing. On the contrary, the country is universally satisfied with them:" just what we have seen the right honourable secretary assuring us of, in the case of the £600 a-year magistrates. The right honourable secretary, having it in charge to find his £600 a-year insufficient, its sufficiency notwithstanding, had somewhat of a bias upon his own mind. According to the right honourable secretary, with these his £600 a-year magistrates the country is universally satisfied. But then, as has been seen, though satisfied, he is at the same time dissatisfied with them: and besides, their aptitude being to be proved as well as disproved, he had something of a bias, though a shifting one, upon his mind. The Frenchman had no such bias. He is himself neither judge, magistrate, nor lawyer; nor patron, with reference to any who are. He is a man of estate, birth, and connexion; and, though all that, a man of information and discernment. It did not occur to me to cross-examine him as to fees: but, as what we were talking about turned upon what was the whole of the emoluments, I cannot but think that if there are fees, they are fees of which neither the magnitude can be increased, nor yet the number extended, otherwise than by the satisfaction afforded by good judicature; and that, if any at all, the £50 does not receive from them any such increase as would affect the argument. I for my part would not give for them another £50.

This, though, if it were anything to the purpose, it might surely serve for inquiry, — is not official: what follows is. Printed "Register of Officers and Agents, &c. prepared at the department of state." Date of Congress Resolution, 27th April, 1816. Printed anno 1818, at Washington, page 18. Judiciary of the United States Supreme Court. Chief Justice, dollars 4000; not so much as pounds 1000. No equity, put above law, to stop and overrule it. Compare this with Lord Eldon's £23,000 a-year (those who make least of it make this) with so many other thousands for his son; not to speak of the thousands a-year salaries of the minor and common-law chiefships, and puisneships, and masterships, besides the ever corruptive fees. Before the words, "*every other country,*" stands indeed, in one of the reports of the right honourable secretary's speech (No. 8,) the limitative word "*almost:*" let any one judge whether it was not a prudential one.

A thing more to be wished than hoped for is — that, in the right honourable secretary's situation, and those associated with it, right honourable gentlemen and noble lords were a little more careful than they sometimes are, when speaking to facts, especially distant and complex ones, such as those in questions like this more especially. By Lord Liverpool, not many years ago, if recollection does not greatly deceive me — by Lord Liverpool it

was declared and insisted upon, that in this country (population for population he could not but mean) the expense of the official establishment was less than in the United States. Proceeding in this strain, had he entered upon particulars, the King (he would have had to say) costs this country less than the President does the United States. So much for first treasury lord. Right honourable secretary — would he, after speaking upon the particular branch of the expenditure now in hand, as he has done — would he, after parliamentary inquiry into the facts, consent to pay the judicial establishment upon the same scale as it is paid, in that country, in which, to use his own phrase, it is so much less parsimoniously paid than in this? Not he indeed! What is it (he would then turn upon us and ask) what is it to the purpose, what people do in other countries? — in countries in which the state of things is so different from what it is in our own? Is it for us to receive laws from other countries?

In a committee of his own nomination, will he be pleased to elicit the evidence by which the correctness of this assertion of his will be proved? He knows better things. What use, he would ask, is getting up evidence from which nothing is to follow? Lord Liverpool — will he consent to assign, to the whole official establishment, the same rate of remuneration as that which has place in the United States — general government and particular states, always included? To no such insidious proposal would his lordship give acceptance. His love for the people and for economy is too sincere, to suffer him to pledge himself to an innovation, from which the dear people would have nothing to gain and so much to lose.

On pain of ignominy, a helpless radical must maintain, whether he will or no, some caution in regard to his facts: were he to make a slip, he would never hear the last of it. High situation places a man at his ease in regard to facts. As often as occasion requires, he may let fly insinuations or assertions, such as the above, and thenceforward hear no more of them than he pleases. Should any unpleasant use of them be endeavoured to be made, up comes the rule: "No allusion to anything said in a former debate." Good, if responsibility be good for nothing: not so clearly so, if responsibility be good for anything. So far as regards facts, it is a counterpart to that mendacity licence, which, in *Scotch Reform* and elsewhere, has been held up to view as one of the pillars and main instruments of English judicature.

Throughout this examination, I have never been altogether free from feelings of compunction, at the thoughts of the sort of liberty all along taken with the author of the special jury bill. On the present occasion, I found him doing as, in his place, everybody else has done. On that other occasion, I see him taking a course peculiar to himself. Time does not at this moment permit me so much as to read the bill: I cannot therefore, on the ground of any opinion of my own, venture to say a syllable of it. But, if it does but completely substitute, as I am assured it does, *lot* to *packing*, and is in other respects what it has been certified to be by those whose discernment and love of justice I stand assured of, it will, by this one measure, ensure to him a stock of popularity and public confidence, such as I tremble but to think of.*

Should this measure be carried through, he must however content himself, as well as he can, with the reputation of probity: for as for that of consistency, it will quit him, and seek refuge in its chosen seat, the bosom of his noble and learned friend. Consistency being where it is, — how anything of this sort should have found its way into the secretary of state's office, is the mystery of mysteries!

One word more as to patronage. On the present occasion, it is to the lessening the value of it to the honourable secretary that my endeavours, such as they are, have been applying themselves. Yet, so far am I from grudging him any good thing obtainable without preponderant evil to the community — in the case of the county courts bill, no desire a man in his place can have, for feeling the patronage of it is in his own hands, can be more sincere than mine for seeing it there. Supposing the situation equally acceptable to the only class of expectants worth providing for, here is a stock of patronage worth at least three times as much as that other.

County court judges, thirty: salary of each, £800: this gives £24,000 a-year — thrice as much as the £6000.

No hands can I find anywhere, which, in point of aptitude (Matchless Constitution standing as it stands) would bear a thought in comparison of his. Lord lieutenants? — they are so many invisible objects. In the high court of public opinion, nobody will see them — nobody will know who they are. The judge chosen by each will be chosen of the family most connected in the county, which is as much as to say, the most unapt that could be chosen. Armed as he is like any Achilles, still the place of a secretary of state is at the bar of public opinion, and he stands an object to all eyes. Here are mine, for example, weak as they are, yet better perhaps than none, thus watching him: could they keep running after thirty, or I don't know how many more, Lord lieutenants?

Chancellors! — "aye — there's the rub." Sooner than see the patronage in the hands of the model of consistency, or even of any other English fee-fed judge, — sooner, much sooner, would I see it added to the *portefeuille* of the Chancellor of France.

* Vide p. 163 and const. code, ch. ix. § 16.

SPEECH of Mr. SECRETARY PEEL, on introducing the Police Magistrates' Salary Increase Bill, 21st March 1825. *Extract reported in the Times and the Morning Chronicle, of the 22d:* —

TIMES.

1.

He held in his hand papers, from which, if he chose to enter into any detail, he could prove to the satisfaction of the committee, that since the institution of police magistrates, the business which devolved on those individuals had, owing to various acts of parliament which had been passed, independently of the increase of population, greatly augmented. *Although that circumstance would of itself be a sufficient reason for increasing the salary of the magistrates,* he rested his proposition upon grounds which he hoped the committee would consider even more satisfactory.

2.

When the police magistrates were first appointed, it was the practice to select individuals to fill the office who, he must say, were incompetent to discharge the duties which devolved upon them. He found from the papers which had been laid upon the table, that out of twelve police magistrates appointed at a former period, there were only three barristers; the rest were composed of a major in the army, a starch-maker, three clergymen, a Glasgow trader, and other persons who, from their occupations, could not but be considered as utterly unqualified to perform the duties of magistrates.

3.

The law had fixed no limitation with respect to the previous education of persons appointed to the office of magistrate, but he thought the committee would be pleased to hear, that a limitation on that point had been *prescribed* by the secretary of state. Neither his predecessor in office (Lord Sidmouth) nor himself had ever appointed a person to fill the office of magistrate who had not been a barrister of three years standing. That was a rule to which, in his opinion, it was *most desirable to adhere.*

4.

But in order to enable the secretary of state to abide by that rule, and to carry it into practice, it was necessary to augment the present salary of police magistrates. He implored the House to consider, whether £600 a-year (the present salary) was sufficient to induce a barrister to give up the emoluments of private practice, and the hope of preferment in his profession, to undertake the duties of a magistrate,

5.

which required their *almost constant attendance?* It could not, he thought, be consi-

MORNING CHRONICLE.

1.

He held papers in his hand, showing in the clearest manner the great *increase* that had taken place in the business of the police offices since their first institution, arising from the great increase of the population of the metropolis, amongst other causes. It appeared from those papers, that since their first establishment, considerable additions had been made to the business of the offices, by various acts of parliament, passed at different times, but he would lay his proposition upon stronger grounds.

2.

In the first instance, the salaries of the magistrates amounted only to £400 per annum; it was afterwards raised to £600; but it was well known, that under the former regulation the persons appointed were totally *incompetent* to the duties. He found, that of the twelve magistrates first appointed, three were barristers. One was a major, three clergymen, two starch-dealers, and one a Glasgow trader.

3.

He thought the committee would be pleased to hear, that though there was no limitation fixed by law to determine the eligibility of the persons to fill such offices, Lord Sidmouth and himself had confined themselves strictly to the appointment of *barristers alone,* and had not nominated any to the office of magistrate who were of less than *three years* standing. He would ask the committee, under those circumstances,

4.

whether £600 a-year could be sufficient to tempt a professional man of *adequate abilities* to relinquish his hopes of rising at the bar?

5.

The duties at the office would require his constant attendance, and the committee, he

TIMES.

dered an unreasonable proposition, that in future the secretary of state should *be empowered* to give to each police magistrate the sum of £800 per annum.

6.

He hoped that he should *not* be told, that individuals might be found, who would be willing to undertake the magisterial duties for a less sum. It was very true that *such was the case.* He was constantly receiving applications from persons who were anxious to be appointed police magistrates. Those applications proceeded principally from *country magistrates*, who had discharged the duties of *their office ably and satisfactorily;* but whom, nevertheless, he did not think right to appoint to be police magistrates in the metropolis. He held the unpaid magistracy in as high respect as any man, but he could easily conceive that a gentleman might, in consequence of the influence which he derived from local circumstances — the relations of landlord and tenant for instance — be able to discharge the duties of a country magistrate in a satisfactory manner, who would be incompetent to undertake the important ones of a police magistrate.

7.

"Police magistrates" was the name generally given to those magistrates to whom he alluded; but those persons were mistaken who supposed that the duties which they had to perform were merely executive. They were called upon to administer the law in a great number of complicated cases which were submitted to them. Out of some recent acts of parliament some very important questions arose, which the police magistrates were called upon to decide. Several nice cases had occurred under the building act. He knew one case of that description, which had occupied the attention of the magistrates *for a couple of days, during which surveyors had been examined on both sides.* He thought that a salary of £800 a-year was not more than a fair remuneration *for the practice which a barrister must abandon when he undertook the duties of a magistrate.*

8.

It appeared to him, that the individuals appointed to administer justice in this country were more parsimoniously dealt with than in almost any other country in the world. He thought this was poor economy, to give inadequate remuneration to individuals selected to administer justice, whether in the *highest office of judge*, or in the less important but still very important office of *police magistrate.*

9.

He might, he did not doubt, get persons —

CHRONICLE.

thought, would not consider it unreasonable to *empower* the secretary of state to grant them each a salary, not exceeding £800 a-year.

6.

It was true, he might be told that there were many individuals now ready to accept those offices: but though that was certainly the case, they were most of them country *gentlemen*, who had discharged the duty of magistrates in their respective counties; but that was no reason why they should be selected to fill the situation of police magistrates in the metropolis. He respected, as much as any man could, the unpaid magistracy of the country; but it did not follow, that because they were enabled by the weight of their character and influence to perform the ordinary routine duties of county magistrates, they were competent to discharge the more arduous business of the police in this city.

7.

Many acts of parliament had increased the duties of those offices; important questions in civil causes often came before them, and under the building acts they were often obliged to hear the evidence of surveyors on each side, and to determine many points which required a considerable degree of legal knowledge. He would rather rest his proposition on that single statement, than enter into the details contained in the papers which he held in his hands.

8.

It appeared to him, that this country was more parsimonious in its provisions upon the administration of justice than any other, and he was sure that there could not be a worse economy than such saving, either with regard to the highest or to inferior officers.

9.

The great object should be to procure persons qualified to discharge the duties [hear! hear!]

TIMES.

10.

those persons *who could not succeed in their profession — the refuse of the bar* — to fill the office of police magistrate at a lower salary than he proposed to give — he could save £100 or £200 a-year by such a proceeding, but the public would have cause to lament it.

11.

The present police magistrates were of the highest personal respectability, and performed their duties to the great satisfaction of the country. They were thirty in number, *only four of whom were not barristers.* The right honourable gentleman concluded with moving — "That it is the opinion of the committee, that each justice appointed, or to be appointed, under the act for the more effectual administration of the office of justice of the peace, shall receive a salary not exceeding £800.

CHRONICLE.

10.

To tell them that they might take the *refuse of the bar*, would be to recommend a course which the public would soon have reason to lament. Upon those grounds he trusted that the committee would not consider the addition of £200 a-year to their present salaries too much to remunerate them for the services of the police magistrates.

11.

They were acquainted with the character of the individuals who filled those offices at present. *Their knowledge, experience, and respectability, were unquestionable.* They were thirty in number, and their services had already proved the importance of the duties they had to fulfil. The honourable gentleman concluded with moving a resolution — "That each of the justices appointed, or to be appointed, to the police offices of the metropolis, shall be allowed a salary not exceeding £800 a-year, to be paid by one of his Majesty's principal secretaries of state."

PAPER VIII.

INDICATIONS RESPECTING LORD ELDON,

INCLUDING

HISTORY OF THE PENDING JUDGES'-SALARY-RAISING MEASURE.

ORIGINALLY PUBLISHED IN 1825.

SECTION I.

FACTS SUSPECTED.* SUBJECTS OF INQUIRY FOR THE HOUSE OF COMMONS.

RESPECTING Lord Eldon, certain suspicions have arisen. The object of these pages is — to cause inquiry to be made, if possible, by the competent authority, whether there be any ground — and if yes, what — for these suspicions.

In general terms, they may be thus expressed: —

1. That, finding the practice of the court of Chancery replete with fraud and extortion, Lord Eldon, on or soon after his coming into office as chancellor, formed and began to execute a plan for the screwing it up, for his own benefit, to the highest possible pitch; to wit, by assuming and exercising a power of taxation, and for that purpose setting his own authority above that of parliament; which plan he has all along steadily pursued; and, if not, the present *Judges' Salary-raising Measure*, 69, anno 1822, a late act, to wit, the 3d Geo. IV. cap. 6, is the consummation of it.

2. That, it being necessary that, for this purpose, the other Westminster Hall chiefs should be let into a participation of such sinister profit — to wit, as well for the better

* *Objection* — Among these so styled *facts*, are matters of *law*. *Answer* — The existence or supposed existence of a matter of law, is matter also of fact.

assurance of their support, as because the power of appointing to those offices being virtually in his hands, whatever is profit to them is so to him — the means employed by him tended to that effect also, and have been followed by it.

In relation to the whole scheme, conception may perhaps receive help, from a glance, in this place, at the titles of the ensuing sections. Here they are: —

§ 2. Under Lord Eldon, equity an instrument of fraud and extortion — samples of it.

§ 3. Anno 1807.—Order by Chancellor and Master of the Rolls, augmenting the fees of offices in the gift of one of them.

§ 4. Profit to subordinates was profit to principals: so, in course, to successors.

§ 5. Contrary to law was this order.

§ 6. By it, increase and sanction were given to extortion.

§ 7. So, to corruption.

§ 8. How Lord Eldon pronounced the exaction contrary to law, all the while continuing it.

§ 9. How the Chancellor had laid the ground for the more effectual corruption of himself and the other chiefs (anno 1801).

§ 10. How the project was stopped by a solicitor, till set a-going again, as per § 3.

§ 11. How the other chiefs were corrupted accordingly.

§ 12. How the illegality got wind, and how Felix trembled.

§ 13. How the Chancellor went to parliament, and got the corruption established.

§ 14. How the Head of the Law, seeing *swindling* at work, stept in and took his profit out of it.

§ 15. How King George's judges improved upon the precedent set by King Charles's in the case of *ship-money*.

§ 16. How to be consistent, and complete the application of the self-paying principle.

§ 17. How Lord Eldon planned and established, by act of parliament, a joint stock company, composed of Westminster Hall chiefs, and other dishonest men of all classes.

§ 18. How the King's Chancellor exercised a dispensing power.

§ 19. Character evidence.

SECTION II.

UNDER LORD ELDON, EQUITY AN INSTRUMENT OF FRAUD AND EXTORTION. SAMPLES: —

A SINGLE sample will serve to show in what state Lord Eldon found this branch of practice, and that it stood not in much need of improvement at his hands: by a few more which follow, a faint, yet for this purpose a sufficient idea, will be given of the improvement it has actually received under his care.

By the command of a father, I entered into the profession, and, in the year 1772 or thereabouts, was called to the bar. Not long after, having drawn a bill in equity, I had to defend it against exceptions before a Master in Chancery. "We shall have to attend on such a day," (said the solicitor to me, naming a day a week or more distant;) "warrants for our attendance will be taken out for two intervening days, but it is not customary to attend before the third." What I learnt afterwards was — that though no attendance more than *one* was ever bestowed, *three* were on every occasion regularly charged for; for each of the two falsely pretended attendances, the client being, by the solicitor, charged with a fee for himself, as also with a fee of 6s. 8d. paid by him to the Master: the consequence was — that for every actual attendance, the Master, instead of 6s. 8d., received £1, and that, even if inclined, no solicitor durst omit taking out the three warrants instead of one, for fear of the not-to-be-hazarded displeasure of that subordinate judge and his superiors. True it is, the solicitor is not under any *obligation* thus to charge his client for work not done. He is however sure of *indemnity* in doing so: it is accordingly done of course. Thus exquisitely cemented is the union of sinister interests.* So far as regards attendances of the functionaries here mentioned, thus is the expense tripled; so, for the sake of the profit on the expense, the delay likewise. And I have been assured by professional men now in practice, that on no occasion, for no purpose, is any Master's attendance ever obtained without taking out three warrants at the least.

So much for the state of the practice before Lord Eldon's first chancellorship: now for the state of it under his Lordship's auspices.

Within the course of this current year, disclosures have been made in various pamphlets. One of the most instructive is the one entitled "A Letter to Samuel Compton Cox, Esq. one of the Masters of the Court of Chancery, respecting the Practice of that court, with suggestions for its alteration. By a Barrister. London, 1824." Extracted from it are the following alleged samples: samples of the improvements made in the arts and sciences of fraud and extortion, by Masters in Chancery and others, under the noble and

* Of the result of the above-mentioned experience, intimation may be seen in the *Théorie des Peines et des Recompenses*, first published in French, anno 1811, or in B. I, ch. 8. of the *Rationale of Reward*, just published, being the English of what regards *Reward* in French.

These things, and others of the same complexion, in such immense abundance, determined me to quit the profession; and, as soon as I could obtain my father's permission, I did so: I found it more to my taste to endeavour, as I have been doing ever since, to put an end to them, than to profit by them.

learned lord's so assiduously fostering and protecting care.

I. *In regard to attendances on and by Masters, money exacted by them as above, when no such services are performed.*

P. 12. "The issuing of warrants is another subject which requires consideration. These are issued frequently upon states of facts, abstracts of titles, charges and discharges, &c. *not according to the time consumed* in going through the business before the Master, *or his clerk*,* but according to the *length of the statement*. The clerk *takes it for granted*, that the investigation of a state of facts of a given length may be *expected* to occupy a given number of hours. The solicitor, therefore, in drawing such his bill of costs, *after the statement has been gone through*, leaves a blank for the number of warrants "to proceed on the state of facts." *The Master's clerk fills up the blank*, by inserting such a number as *might*, *if* there had been much contention between the different parties, have by *possibility* been issued. Thus, where *two* or *three* are all that, in fact, have been taken out, *ten* or *fifteen* are charged and allowed. The solicitor produces those he has *actually received* in the course of the business, and *the clerk* delivers to him so many *more* as are necessary to make up the requisite number.†

P. 12. "A similar process takes place with respect to *the report*. If the charge for the warrants alone were all that was to be complained of, the mischief would not be so great. But *you are aware, sir*,‡ that an attendance on each of these warrants is charged for and allowed, and that frequently by several different solicitors,‖ so that the expense to the suitors is grievously increased."

II. *Of the sinister profit made by the solicitor, the greater part has for its cause the rapacity of the Master, supported by the Chancellor.*

P. 9. "Copies of proceedings of all sorts, of states of facts, of affidavits, of reports, of every paper in short which is brought into the office, are multiplied without the least necessity; and, in many instances, are *charged for, though never made*. For instance, in an amicable suit, where the only object is to obtain the opinion of the court on some doubtful point, and the Master's report is previously necessary to ascertain the facts of the case clearly, each solicitor concerned is required, in most instances, to take, or at least to pay for, a copy of the state of facts carried in, of the affidavits in support of it, and of the draft of the report; and in the event of his not taking these copies, he is not allowed to charge for any of his attendances in the Master's office."

P. 10. "The draft of the report is kept, with the other papers relating to the suit, in the Master's office; and to such a length is the system of charging for copies carried, that in amicable suits it not unfrequently happens, I believe, that no copy whatever of the draft-report is made, but the solicitor merely looks over the original draft in the Master's office. Yet, even in this case, two or more copies will be charged for* as made for the plaintiff and defendants." pp. 10, 11.

III. *How, by breach of duty as to attendance on the part of Masters and their clerks, delay and expense are manufactured by them, and profit out of it, over and above what is exacted by them on mendacious grounds, as above.*

P. 15. "The Masters seldom, I believe, make their appearance in Southampton-buildings before *eleven*, and are mostly to be seen on their way home by *three* o'clock at the latest."

P. 16. "Another evil is that of issuing warrants to different parties to attend at the same hour."

"With some exceptions," says another pamphlet, with a high and responsible name to it, p. 32, "I find a general understanding prevails, that the *earliest* appointment for a Master must be *eleven*, and the *latest* at *two* o'clock." Consequence — warrant sent for; frequent answer— 'Master full for a week.' Page 31—'Court sits from ten to four.' So far the authority. Court, sitting as yet in public, cannot convert *itself* into a sinecurist: this accommodation it cannot afford to any but its feudatories, who, so long as they act, the shorter the proportion of time in a day they sit on each cause, have the greater number of attendances to be paid for.

The attendance styled *the Master's*, is, after

* Of the business charged for, as if done by the Master, the greater part, Masters taken together, is done by the Master's clerk. The officers styled Six-clerks have long ascended into the Epicurean heaven, the region of sinecures: the Masters are jogging on in the road to it. I have known instances of masterships given to common lawyers, to whom the practice of the court was as completely unknown as anything could be.

† Thus exacting, for the Master, payment for that same number of attendances not bestowed; and as to solicitors, not only allowing but forcing them, on both sides — and there may be any number on each side — to receive payment, each of them, for the same number of attendances on his part.

‡ Thus saith the nameless barrister to the Master, who has taken care all this while to know no more of the matter than Lord Eldon does. He is one of the thirteen commissioners, commissioned by Lord Eldon, to inquire, along with Lord Eldon, into the conduct of Lord Eldon.

‖ Though no cause has more than two sides — the plaintiff's and the defendant's — yet on each side there may be as many different solicitors as there are different parties, and to the number of them there is no limit.

* By, and for the profit of, the Master.

all, in many instances, only the *Clerk's*: so that it may be matter of calculation at the end of what period, under the cherishing care of Lord Eldon, all masterships may have ripened into sinecures, and thus completed the course completed already by the six-clerkships. Per pamphlet, entitled Rewards, &c. page 49, of which presently. Average emolument of one of the Master's *clerks*, in 1822, 1823, and 1824, £2300 a-year.

IV. *Strict community of sinister interest between the judicial and professional lawyers; the judicial principals, the professional, forced accomplices.*

P. 13. "Their bills will be less rigidly examined. Under these circumstances, it is not the interest of a solicitor to quarrel with the Master's clerk."[a] Both are alike gainers by the existing system. — P. 14. "In cases where the costs come out of a fund in court, *much less strictness* is likely to prevail. If the plaintiff's solicitor be allowed for attendances on more warrants than are actually taken out during the progress of the business, a similar allowance must be made to the defendant's solicitor. But even if it were both the interest and the inclination of the solicitor to amend this practice, it is not in his power so to do. He might indeed amend it so far as his own charges go, but no farther. Over those of the Master's clerks he has no controul; and he is moreover at the mercy of the clerk. If he quarrels with the clerk, he must expect to be thwarted and delayed in every suit which comes into that office, and to have his bills rigorously taxed. The master's clerk, with the assistance of a clerk in court, taxes the solicitor's bill; but there is nobody to tax the Master's bill."

V. *Corruption and extortion, by bribes given to and received by Master's clerks, in addition to the sinister profit, carried as above to the account of the Master.*

P. 13. "The gratuities at present allowed to the Master's clerks ought to be done away with altogether .... Solicitors who are in the habit of giving large gratuities to the clerks, will at any rate be looked upon favourably. Their business will be readily attended to, and oftentimes to the delay of others, who, in strictness, are entitled to priority."

VI. *Anno* 1814, *Lord Eldon's eyes, forced to open themselves to fraud and extortion in one portentously scandalous instance, kept shut in all other instances, before and since.*

P. 11. "With regard to copies of particulars of sale, where an estate is sold in the Master's office, a material alteration has of late years been made. To such a height had these charges amounted, that in one instance (Casamajor *v.* Strode) £700 were claimed for *compensation-money*, in lieu of *written* copies of *particulars of sale*. In consequence of that charge, the *general order of 24th March* 1814 was made, by which the Master is allowed sixpence a side for so many printed copies of the particulars as there are *actual* bidders, *and no more*. There seems no good reason for making even this allowance. It would be fair enough, *if the Masters are to continue to be paid by fees*, to allow the expense of copying the particular for the printer, and even a fee, if thought necessary, for settling it; but beyond that, as there is no actual trouble, there should be no charge on the suitor." p. 12.

Of the particulars above given, a general confirmation may be deduced from the contents of the (I now see) *named*, but not promiscuously published pamphlet, above alluded to — Mr. Vizard's.

What is above is a small sample of that which is said to have place. Of what follows in sections 4, 8, and 9, the design is — to show how that which has place came, and comes, to have place.

SECTION III.

ANNO 1807. — ORDER BY CHANCELLOR AND MASTER OF THE ROLLS, AUGMENTING THE FEES OF OFFICES IN THE GIFT OF ONE OF THEM.

It consists of a printed pamphlet of 25 pages, bearing in the title-page the words following:—

"List of Costs in Chancery, regarding Solicitors, and also Clerks in Court, as increased by orders of Court, dated 26th February last; issued under the joint signatures of the Right Honourable the Lord Chancellor, and Master of the Rolls: being exact copies of those Orders. The same having been collated with the original Lists of the Court.

"London: printed for Heraud and Co., law stationers, Carey Street, corner of Bell Yard, by J. & W. Smith, King Street, Seven Dials, 1807."

In the preamble to that part which regards the "clerks in court fees," the order speaks of itself as establishing "a schedule of—increased fees." Thereupon follows the schedule, and the number of the fees is forty-three.

Anno 1814. In pursuance of certain orders of the House of Commons, returns were made, amongst other chancery offices, from that of

[a] "Since writing the above, I have been informed that in *one* office,[a] the clerk is not allowed to receive gratuities, but is paid a stipulated salary: and I understand that the business of that office is conducted as well, as expeditiously, and as satisfactorily in all respects, as in other offices. It might seem invidious to say more so." —*Barrister.*

[a] Worth knowing it surely would be by the House of Commons, what that *one* office is. — J. B.

the *Six-clerks*, and another from that of the *sworn and waiting clerks*. These are comprised in pages 5, 6, 7, 8, of a paper entitled "Fees in Courts of Justice." Dates of order for printing, 13th May and 11th July 1814. Nos. 234 and 250.

In the return relative to the sworn clerks, are reprinted the contents of the pamphlet above mentioned.

SECTION IV.

PROFIT TO SUBORDINATES WAS PROFIT TO SUPERIORS; SO, IN COURSE, TO SUCCESSORS.

HERE begins the proof of the fact — that a twopenny loaf costs twopence: in Honourable and Right Honourable House, the proof will be insufficient; in any other, unless it were a right honourable one, it would be superfluous: for information, yes: but for reminiscence, it may have its use.

1. Wherever an office has any money value so has the patronage of it. By the patronage, understand the power of determining the individuals by whom, together, or one after another, it shall be possessed; — the whole power, or any share in it.

Take any office singly, compared with the value of the possession, that of the patronage may be less or greater. It is most commonly less; but it may be many times greater. Patron (say) a father near the grave; son, in early youth: value of the office if occupied by the father, not one year's purchase; if by the son, a dozen years or more.

Present income of a Six-clerkship, about £1000 a-year: so stated to me by gentlemen belonging to the office. It is regarded as a sinecure; — patron, the Master of the Rolls. One of these judges was Sir Thomas Sewell: children, numerous. No further provision for this one, without injustice to others. Suppose it sold, what would it have been worth to him? Not a fifth of what it was by being given. £2000 the price usually got by patron. So at least said by gentlemen belonging to the office. This for the information of Mr. Robinson — the Mr. Robinson who, as far as I understand hitherto, to secure purity, interdicts sale, leaving gift as he found it.

Say *patron* and *grandpatron*, as you say *son* and *grandson*. Grand patronage is not so valuable as patronage, True: nor yet valueless. In the King's Bench, is an office called the clerkship of the rules. Annual value, as per finance reports, 1797-8, £2767. Nominal joint patrons in those days, Earl of Stormont and Mr. Way; grandpatron, Earl of Mansfield, Lord Chief-Justice. Trustee for the Lord Chief-Justice, said Earl of Stormont and Mr Way: price paid £7000:— circumstances led me to the knowledge of it. But for grandpatron's cowardice that cowardice which is matter of history) more might have been got for it. That or thereabouts was got for it a second time.

Would you know the money value of an office, exclusive of the emolument in possession? To the aggregate value of the patronage belonging to it, add that of the grandpatronage. Nor is that of great-grandpatronage nothing. Wherever you can see a grandpatron other than the king, seeing the king, you see a great-grandpatron.

A Mastership was a fortune to a daughter of Lord Erskine. Had he held the seals long enough, a Six-clerkship might have been a provision for a son, supposing the matter settled with Sir William Grant, who had no issue.

If either patronage, grandpatronage, or great-grandpatronage of the office are valueless, so is the possession of it.

In case of abuse, profit to individuals is one thing; mischief to the public, another. Profit from fee-gathering offices may be made either by sale or by gift. When by sale, small is the mischief in comparison of what it is when by gift. But this belongs to another head.

Neither by the Chancellor, nor by the Master of the Rolls (it may be said) are nominated any of the officers to whose fees the order gives increase. True: nor by this is the additional value, given by it to the patronage, lessened. Along with the values of the sworn-clerkship and the waiting-clerkship, rises that of the six-clerkship. *Tenpence* per folio is paid to sworn and waiting clerks; *tenpence* per *ninety words*, called a *folio*, for copies taken by them: out of each such tenpence, the six clerks, for doing nothing, receive fourpence. This is all they receive: an *all* which to some eyes may not appear much too little.

The measure was one of experiment: direct object, that project of plunderage, which will be seen continued and extended by the hands of Lord Eldon in 1807, and sanctioned by parliament in 1822: collateral, or subsidiary object on his part, giving additional strength to the dominion of judge-made over parliament-made law. Full butt did this order run against a special statute, made for remedy against this very abuse: not to speak of the general principle laid down, and thus vainly endeavoured to be established, by the petition of rights. But as to this, see next section.

Of the price the public was made to pay for this sinister profit, not more than half has, as yet, been brought to view. The other half went to stop mouths. Waste, all of it, as well as productive of correspondent delay, is what is exacted for all three sorts of clerks. Thus felt, and even yet say, the solicitors. The plunderable fund is composed of the aggregate property of all those who can afford to buy a chance for the article sold under the name of equity. The greater the quantity

taken by the one set, the less is left for the other — see an experience of this shown in § 13. Preceded accordingly by the bonuses given to these more immediate cointeressees of the chancellor and his feudatory, was a like bonus given to the fraternity of solicitors.

SECTION V.

CONTRARY TO LAW WAS THE ORDER.

Not to speak of clauses of *common*, that is to say, *imaginary law*, called *principles*, borrowed or made by each disputant for the purpose of the dispute — full butt does the order run against indisputable *acts of parliament*; — acts of general application applying to taxation in any mode without consent of parliament; — acts of particular application, applying to taxation in this particular mode: —

1. First comes the *generally*-applying act, 25 Ed. I. c. 7, anno 1297—"We have granted for us and our heirs, as well to archbishops .... as to earls .... and to all the commonalty of the land, that for no business from henceforth we shall take such manner of aids, tasks, nor aprises, but by the common assent of the realm."

2. Next comes 34 Ed. I. stat. 4, c. 1, anno 1306 — "No tallage or aid shall be taken or levied by us, or our heirs, in our realm, without the good-will and assent of archbishops, bishops, lords, barons, knights, burgesses, and other freemen of the land."

3. Now comes the *specially*-applying act, 20 Ed. III. c. 1, anno 1346—"First, we have commanded," says the statute, "all our justices to be sworn, that they shall from henceforth do equal law and execution of right to all our subjects, rich and poor. And we have ordained and caused our said justices to be sworn, that they shall not from henceforth, as long as they shall be in the office of justice, take fee nor robe of any man but of ourself, and that they shall take no gift nor reward, by themselves nor by others privily or apertly, of any man that hath to do before them by any way, *except meat and drink, and that of small value.*"*

4. Lastly comes the all-comprehensively-applying clause in the act commonly called the Petition of Rights, 3, Ch. I., c. 1, § 20— "That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament."

Turn back now to the judge-made law, and the enactors of it. Could they have had any doubt as to the illegality of what they were doing? Not unless these sages of the law had forgot the A, B, C of it.

But a pretence is made, — and what is it? "Whereas the same" (speaking of the fees of the offices in question) "have been at different times regulated by the orders of this court, as occasion required."

The "different times," — what are they? They are the *one* time, at which, by a like joint order, anno 1743, 17 Geo. II., Lord Chancellor Hardwicke, his Master of the Rolls, Fortescue, "did order and direct that the sworn-clerks and waiting-clerks do not demand or take any greater fees or reward for the business done or to be done by them in the six-clerks' office, than the fees and rewards following:" whereupon comes a list of them.†

In any of the many reigns in which parliament never sat but to give money, and in which, could kings have kept within bounds, there would have been an end of parliaments, — as the value of money sunk, augmentation of subordinates' fees by superiors might have had something of an excuse. But Lord Hardwicke — while he was scheming this order, he

* The exception — *the meat and drink of small value* (need it be said?) speaks the simplicity of the times: roads bad, inns scantily scattered, judges in their progresses in the suite of the monarch, starved, if not kept alive by the hospitality of some one or other, who, in some way or other, "*had to do before them.*"

A few words to obviate cavil.

Objection — Immediately before this last-mentioned clause in the statute, runs a sort of special preamble, in these words: — "To the intent that our justices should do every right to all people, in the manner aforesaid, without more favour showing to one than to another." Well then: fee, the same to all, shows no such favour.

Answer—1. Preamble limits not enacting part: — a rule too generally recognised to need reference; disallow it, the whole mass of statute-law is shaken to pieces.

2. Fee the same to all, *does* show such favour in the extreme. A. has less than £10 a-year to live on: B. more than £100,000 a-year: on A. a 5*s.* fee is more than ten thousand times as heavy as on B. Of the B.'s there are several: of the A.'s several millions. By the aggregate of the fees exacted on the plaintiff's side, all who cannot afford to pay it are placed in a state of outlawry: in a still worse state those who, having paid a certain part of the way, can pay no further. Ditto on defendant's side, sells to every man who, in the character of plaintiff, is able and willing to buy it, an unlimited power of plundering and oppressing every man who cannot spend as much in law as he can.

† House of Commons paper, 1814, intituled, "Fees in Courts of Justice," p. 5. — Returns to orders of the Honourable House of Commons, of 31st March and 2d of May 1814: for "A Return of any increase of rate of the fees, demanded and received in the several superior *Courts of Justice*, civil or ecclesiastical, in the *United Kingdom*, by the judges and officers of such courts, during twenty years, on the several proceedings in the same, together with a statement of the authority under which such increase has taken place."

1. England — 2. Scotland — 3. Ireland — 234 and 256. — Ordered by the House of Commons to be printed, 13th May and 11th July 1814.

was receiving, in the House of Lords, money-bills in profusion, brought up by the House of Commons. This tax of his — would the Commons have given, or would they have refused, their sanction to it? Under either supposition, this tax of his imposition was without excuse.

Well, and suppose that Chancellor and his Master of the Rolls *had* done what Lord Chancellor Erskine and his Mentor did, — "*order and direct* that the said schedule of fees be adopted?" (p. 18.) But they did no such thing: they were too wary: the time was not ripe for it. George the Second had a Pretender to keep him in check: George the Third had none. True it is, that by their adroitly-worded *prohibition*, all the effect of *allowance* was produced. But, had anything been said about the order, *there* were the *terms* of it: — all that these models of incorruption had in view by it was *repression: allowance* was what it was converted into, by underlings acting out of sight of superiors. Thus, on a ground of rapacity, was laid an appropriate varnish — a coating of severe and self-denying justice.

The caricature-shops used to exhibit divers progresses: progress of a *Scotchman*, progress of a *parson*, and some others. In these pages may be seen that of a *fee-gathering judge*. Seen already has been the first stage of it.

If Lord Erskine, or rather the unfledged equity-man's Mentor, had any doubts of the illegality of what they were doing, no such doubts had Lord Eldon: for now comes another motion in the gymnastics of lawyer-craft — the last stage, or thereabouts, which for the moment we must anticipate.

The last stage in the progress is that which is exhibited in and by that which will be seen to be *his* act — the act of 1822 — 3 Geo. IV. c. 69, as per § 13 of these pages: the assumption, per force, recognised to be *illegal*; because, as will also be seen, the court of King's Bench had just been forced to declare as much: whereupon came the necessity of going, after all, to parliament: *illegality* recognised, but a different word, the word *effectually*-employed, that from all who were not in the secret, the evil consciousness might be kept hid. "Whereas," says the preamble, "it is *expedient* that some provision should be made for the permanent regulations and establishment of the fees of the officers, clerks, and ministers of justice of the several courts of Chancery, King's Bench, Common Pleas, Exchequer, and Exchequer Chamber, at Westminster, and of the clerks and other officers of the judges of the same courts; but the same cannot be *effectually* done but by the authority of parliament" .... thereupon comes the first enactment, enabling judges to deny and sell justice for their own profit, and giving legality and permanence (and, by the blessing of God, Mr. Justice Bailey, and Mr. Justice Park! eternity) to the things of which we have been seeing samples.

As to the *effectuality* of the thing, what had been done in this way without parliament and against parliament, had been but *too effectually* done; and, but for the so lately disclosed *illegality*, might and would have continued to be done, as long as Matchless Constitution held together. At the same time, what is insinuated is — that, although what *had* thus been done without parliament, *had* hitherto and all along been done *legally*, yet, for want of some *machinery*, which could not be supplied but by parliament, it could not *in future* be so effectually done, as it would be with the help of such machinery, which, accordingly, the act was made to supply. Not an atom of any such subsidiary matter is there in the act. All that this act of Lord Eldon's does, is to authorize and require himself, and the other judges in question — the Westminster-Hall chiefs — to do as it had found them doing: taxing the injured — taxing them on pain of outlawry — taxing the people, and putting the money into their own pockets. In § 13, the reader will see whether what is here said of the absence of all machinery is not strictly true. Nothing whatever, besides what is here mentioned, does the act so much as aim at.

SECTION VI.

BY IT, INCREASE AND SANCTION WERE GIVEN TO EXTORTION.

THE illegality of the order supposed, taking money by colour of it, is *extortion*; — either *that* is, or nothing is.

Ask Mr. Serjeant Hawkins else. As good common law as Mr. Anybody else, or even my Lord Anybody else, makes, is that made by Mr. Serjeant Hawkins; so says everybody. Look to ditto's Pleas of the Crown, vol. ii. b. i. ch. 68, § 1. In the margin especially, if you take Leach's edition, or any subsequent one, you will see a rich embroidery of references: if the ground does not suit you, go to the embroidery, and hard indeed is your fortune, if you do not find something or other that will suit you better.

"It is said," says he, "that extortion, in a *large* sense, signifies any *oppression* under colour of right; but that, in a *strict* sense, it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due." So much for the learned manufacturer. For the present purpose, the *strict* sense, you will see, is quite sufficient: as for the *large* sense, this is the sense you must take the word in, if what you want is nonsense. If you do, go on with the book,

and there you will find enough of it; and that too without need of hunting on through the references; for if, with the law-making serjeant, you want to enlarge *extortion* into oppression, you must strike out of *extortion* the first syllable, and, with it, half the sense of the word; which done, you will have tortion — which will give you, if not the exact synonyme of oppression, something very little wide of it; and here, by the bye, you have a sample of the sort of stuff on which hang life and death under *common law*.

SECTION VII.

SO, TO CORRUPTION.

CORRUPTION? No: no such head has the learned aforesaid manufacturer and wholesale dealer in crown-law. No matter: he has *bribery*. Rambling over that field, he picks up *corruption*, which he takes for the same thing. Had he lived in present times, well would he have known the difference. Bribery is what no judge practises: would you know what prevents him, see "Observations on the Magistrates' Salary-raising Bill:" Corruption — self-corruption — is what, as you may see there and here, every Westminster-Hall chief judge has been in use to practise; and is now, by act of parliament, anno 1822, 3 Geo. IV. c. 69, allowed to practise.

For bribery, too, Hawkins has his *strict* sense, and his *large* sense. It is in its *large* sense that he fancies it the same thing with *corruption*. Neither to bribery, however, nor to corruption, does this law of his apply itself, in any other case than that in which he who commits it has something or other to do with the administration of justice.* But, as before, this is all that is wanted here.

"Bribery," says he, "in a *strict* sense, is taken for a great *misprision* of one in a judicial place, taking any valuable thing whatsoever, *except meat and drink of small value*,† of any one who has to do before him any way, for doing his office, or by colour of his office, but of the king only.

"§ 2. But bribery in a *large* sense," continues he, "is sometimes taken for the receiving or offering of any undue reward, by or to any person whatsoever, whose ordinary profession or business relates to the administration of public justice, in order to incline him to do a thing against the *known rules of honesty and integrity*; for the *law abhors* [inuendo the common law, that is to say, it makes the judges abhor] *any the least tendency to corruption, in those who are any way concerned in its administration.*"

Here the learned serjeant waxes stronger and stronger in sentimentality, as he ascends into the heaven of hypocrisy, where he remains during the whole of that and the next long section. "Abhor corruption!" Oh yes, even as a dog does carrion.

Be this as it may, note with how hot a burning iron he stamps bribery and corruption on the foreheads of such a host of sages: — of Lord Erskine (oh fie! isn't he dead?) — Sir William Grant (oh fie! was he not an able judge?) — and Lord Eldon, the Lord of Lords, with his *cæteras* the inferior chiefs.

SECTION VIII.

HOW LORD ELDON PRONOUNCED THE EXACTION CONTRARY TO LAW — ALL THE WHILE CONTINUING IT.

THE following is the tenor of a note obtained from an eminent barrister present, who had particular means and motives for being correct as to the facts, and who does not, to this moment, know the use intended to be made of it. In the Court of Exchequer, February 5, 1820: —

"DONNISON *v.* CURRIE.

"A question was made upon a petition, whether certain allowances, made to a solicitor on the taxation of his bill of costs, were regular, which they would have been, if the court of Exchequer adopted in its practice the additional allowances made by Lord Erskine's order, otherwise not.

"It was objected that those additional allowances were not adopted by the Exchequer, inasmuch as Lord Erskine's order was not legal, and that Lord Eldon had intimated an opinion that he did not consider it as legal.

"The Chief Baron (Richards) admitted that he understood *Lord Eldon had said that he did not consider Lord Erskine's order as being legal, but that it had been now so long acted upon, that the court must be considered as having sanctioned it*, and that he (Richards) should follow what had been said by Lord Eldon." Thus far the report.

As to its being for his own benefit, see § 4.

Thirteen years, and no more, having sufficed thus to set bench above parliament, anno 1820, quære, what is the *smallest* length of time that will have become sufficient before the reign of John the Second is at an end?

Objector — Idle fears! how inconsiderable, in all this time, the utmost of what the peo-

* By Lord Chief-Justice Raymond, or by somebody for him, *Bench* law was afterwards made to explain and amend this *Inn of Court* law of the learned serjeant, in addition to judicial law: corruption election bribery was thereby made bribery likewise. See the embroidery as above.

† To Serjeant Hawkins, we see — to Serjeant Hawkins, though he never was a judge — the statute of Edward the Third was not unknown, though so perfectly either unknown or contemned by the host of the under-mentioned judges.

ple can have suffered from the exercise of this power!

Answer — True, the plunderage has its limit. Thank for it, however — not learned moderation, but a very different circumstance, which will be explained in § 13, when the act by which the last hand was put to the plan comes to be considered: moreover, what makes fees so stickled for in preference to salary, is — that as plunderable matter increases, so will plunderage.

As to its being for his own profit that Lord Eldon thus continued the exaction, see § 4.

Bravo! Lord Chancellor Eldon!—bravo! Lord Chief Baron Richards! "*So long!*" that is to say, just thirteen years: assuming what of course is true — that of the course of illegality begun under Lord Erskine, and pursued under Lord Eldon, the continuation commenced with his re-accession. Years, thirteen! Here then is *one* length of time which suffices to entitle the Westminster chiefs, all or any one of them, to set aside any act or acts of parliament they please: and in particular any act of parliament, the declared object of which is to prevent them from plundering, without stint, all people, who can and will buy of them, what they call *justice*, and from denying it to all who cannot.

But Bar?.... what said Bar to this? Oh! Exchequer is a snug court: small the quantity of Bar that is ever there. But, were there ever so much, Bench cannot raise itself above parliament but it raises Bar along with it. Between Bench and Bar, even without partnership in money or power, sympathy would of itself suffice to make community of sinister interest. The same fungus, which, when green, is made into Bar, is it not, when dry, made into Bench?

No want of Bar was there, anno 1801, when Lord Eldon, as per next section, laid the ground for the decision, thus pronounced anno 1820; as little, when, the next year (1821) as per § 12, ground and all were laid low by the shock of an earthquake. Matchless Constitution (it will be seen) may be turned topsy-turvy, and *lay-gents* know nothing of the matter: Bar looking on, and laughing in its sleeve.

Note here the felicity of Lord Eldon: the profit reaped by him from his *Hegira* of a few months. We shall soon see how, from one of the most unexpectable of all incidents, the grand design of the grand master of delay experienced a delay of six years: a delay, which, like so many of his own making, might never have found an end, but for the short-lived apparent triumph and unquiet reign of the pretenders to the throne. When, upon their expulsion, the legitimates resumed their due omnipotence, it seemed to all who were in the secrets of providence — and neither Mr. Justice Bailey nor Mr. Justice Park, nor any other chaplain of Lord Eldon's, could entertain a doubt of it — that it was only to give safety and success to this grand design of his, that the momentary ascendency of the intruders had been permitted. The Chancellor, by whom the first visible step in the track of execution was taken, being a whig,— not only was a precedent set, and ground thus made for the accommodation of Lord Eldon, but a precedent which the Whigs, as such, stood effectually *estopped* from controverting. Poor Lord Erskine — all that he had had time to do, was to prepare the treat: to prepare it for his more fortunate predecessor and successor. Scarce was the banquet on the table, when up rose from his nap the "giant refreshed," and swept into his wallet this, in addition to all the other sweets of office. As to poor Lord Erskine, over and above his paltry £4000 a-year, nothing was left him, but to sing with Virgil — *Sic vos non nobis mellificatis apes.*

SECTION IX.

HOW THE CHANCELLOR HAD LAID THE GROUND FOR THE MORE EFFECTUAL CORRUPTION OF HIMSELF AND THE OTHER CHIEFS.

For this ground we must, from 1821, go as far back as the year 1801. In the explanation here given of the charges, it seemed necessary to make this departure from the order of time; for, till some conception of the design, and of a certain progress made in the execution of it, had been conveyed, the nature of the ground, so early, and so long ago, laid for it, could not so clearly have been understood.

In nonsense (it will be seen) was this ground laid: plain sense might have been too hazardous. The document in which the design may be seen revealed, is another reported case, and (what is better) one already in print: *Ex-parte Leicester*, *Vesey Junior's Equity Reports*, VI. 429. Buried in huge grim-gribber folios, secrets may be talked in print, and, for any length of time, kept. The language nonsense, the design may be not the less ascertainable and undeniable. Nonsense more egregious was seldom talked, than, on certain occasions, by Oliver Cromwell. Whatever it was to the audience *then*, to us the design is no secret *now*.

Here it follows — that is to say, Lord Eldon's.

Vesey Junior, VI. 429 to 434. Date of the report 1801, Aug. 8. Date of the volume, 1803, p. 432. — Lord Chancellor (p. 432) — "A practice having prevailed, for a series of years, *contrary to* the terms of *an order of the court*, and sometimes *contrary to an act of parliament*, it is more consistent to suppose some ground appeared to former judges,

upon which *it* might be rendered *consistent with the practice:* and therefore, that it would be better to correct *it* in future, *not in that particular instance.* Upon the question, whether that order is to be altered, or to be acted upon according to its terms, which are at variance with the practice, I am not now *prepared* to deliver a decisive opinion: for this practice having been ever since permitted to grow up as expository of the order, if my opinion was different from what it is as to the policy of the order according to its terms, I must collect, that there is in that practice testimony given, that, according to the terms, it would be an inconvenient order."

No abstract this — no paraphrase — *verba ipsissima.* Eldon this all over. None but himself can be his parallel.

Nothing which it could be of any use to insert, is here omitted. Those who think they could find an interpretation more useful to Lord Eldon by wading through the five or six folio pages of his speech, let them take it in hand, and see what they can make of it. All they will be able to do, is to make darkness still more visible.

SECTION X.

HOW THE DESIGN WAS STOPT SHORT BY A SOLICITOR, TILL SET A-GOING AGAIN, AS ABOVE.

THE deepest-laid designs are sometimes frustrated by the most unexpected accidents. From the hardihood of a man whose place was at his feet, we come now to see a design so magnificent as this of the Chancellor's, experiencing the above-mentioned stoppage of six years.

Before me lies an unfinished work, printed but not published: title, "Observations on Fees in Courts of Justice:" Date to the Preface, Southampton Buildings, 17th November 1822. In that street is the residence of Mr. Lowe, an eminent solicitor. The work fell into my hands without his knowledge. He is guiltless of all communication with me. This said, I shall speak of him as the author without reserve. From that work I collect the following facts. Year and month, as above, may be found material.

1. — Page 20. Early in Lord Eldon's first chancellorship, to wit, anno 1801, his lordship not having then been five months in office, Mr. Lowe, in various forms, stated to his lordship, in public as well as in private, that *in his lordship's court, "the corruption of office had become so great, that it was impossible for a solicitor to transact his business with propriety."* This in general terms: adding, at the same time, what, in his view, were particular instances, and praying redress. Note, that to say *in his lordship's court,* was as much as to say *under his lordship's eye: — after* such information, at any rate, if not *before.*

2. — Page 20. Argument thereupon by counsel: Mansfield, afterwards Chief-Justice of the Common Pleas; Romilly, afterwards Solicitor-General. On the part of both, assurance of strong conviction that the charge was well founded; proportionable fears, and not dissembled, of the detriment that might ensue to the personal interest of their client from the resentment of the noble and learned judge.

3. — Page 20, 21. Proof exhibited, of the reasonableness of these fears: — "*Judge angry*"....Petitioner "bent beneath a torrent of power and *personal abuse.*"

4. — Page 21. Five years after, to wit, anno 1806 — Lord Erskine then Chancellor — similar address to his lordship; a brief again given to Romilly (at this time solicitor-general) but with no better fortune: further encouragement this rebuff — further encouragement, to wit, to Lord Eldon, when restored.

3. — Page 21. — In a note, reference to the above-mentioned case, *Ex-parte Leicester,* in Vesey, junior, with quotation of that portion of his lordship's speech, which may be seen above in § 9. Hence a conjecture, that in that same case, Mr. Lowe himself, in some way or other, had a special interest. From the reference so made to that case, and his lordship's speech on the occasion of it, it should seem that the design of it, as above, was not a secret to Mr. Lowe, and that his lordship knew it was not.

Here ends the history of the *stoppage.*

6. — Preface, pp. 6, 7. Upwards of eighteen months antecedently to the above-mentioned 17th November 1822, say accordingly, on or about 17th May 1821, page 6, on the occasion of two causes — Limbrey against Gurr, and Adams against Limbrey, — laid by Mr. Lowe before the Attorney-General of that time, to wit, Sir Robert Gifford, matters showing "that the increasing amount of fees and costs was like *a leprosy rapidly spreading over the body of the law.*"

7. — Preface, p. 3. Anno 1821, Trinity vacation — day not stated — to wit, sometime between July and November, mention made of his lordship's courtesy, and of "a promise which his lordship" — (wrath having had twenty years to cool) — "very condescendingly performed." On this occasion, *hearing* before his lordship, Master of the Rolls sitting with him: proof presumptive, not to say conclusive, that, on this occasion, Lord Erskine's order was under consideration; "Controverted" by Mr. Lowe, a fee that had received the confirmation of one of the sets of commissioners, appointed by Lord Eldon for this and those other purposes that everybody knows of.

8. — Preface, p. 5. Anno 1822, Easter term. Observations on the same subject, laid before

the "Master in Ordinary," meaning doubtless one of the officers ordinarily styled *Masters in Chancery*, ten in number, exclusive of the Grand Master, the Master of the Rolls. With as good a chance of success might the gentleman have laid them before the Master of the Mint.

9.—P. 5. Anno 1822, soon after the above "information and bill" filed against Mr. Lowe, by Mr. Attorney-General, and said to be fully answered. Solicitor to the Treasury, "Mr. Maule." Answer put in by defendant, attachment for contempt in *not* answering. Quære, what means "*information*" and "*bill?*" Information in King's Bench? Bill in Chancery? But what *answer* can an information in King's Bench admit of?

10.—P. 6. Shortly afterwards, Observations laid by him before the lords of the treasury, soliciting the investigation of the charge laid before the Attorney-General (Sir Robert Gifford) *eighteen months before*, on the occasion of the cases of Limbrey and Gurr, &c. as per No. 6.

Containing, as it does, pages between 5 and 6, this same preface is too long for insertion here. Carefully have the above allegations been culled from it. Of the passage contained in the body of the work, the matter is too interesting and instructive to be omitted: it will be found below.

Here then is *one* source, from which, had it ears for corruption, Honourable House might learn at any time, whether, from the above alleged corruption, Lord Eldon has not, during the whole of his two chancellorships, been reaping profit, and whether it was possible so to have been doing without knowing it. By Lord Eldon's present set of nominees, evidence from Mr. Lowe has, I hear, been elicited. Little, if any fruit, I hear, has been obtained from it. No great wonder any such barrenness. Anything unacceptable to their creator they could not be very desirous to receive: nor, perhaps, Mr. Lowe, since the experience had of his lordship's "courtesy," to give.

Astonished all this while at the stoppage—astonished no less than disappointed — must have been the goodly fellowship — the solicitors and clerks in court; importunate for six long years, but not less vain than importunate, had been their endeavours to obtain from Lord Eldon and his Sir William Grant — yea, even from Lord Eldon!—that boon, which with the same Sir William Grant for mediator and advocate, — at the end of six short months, we have seen them obtaining from Lord Erskine: — the said Sir William Grant being, as per § 4, in quality of patron, in partnership with the said clerks in court.*

P. 19. "*An attempt in* 1801 *to reform practice.*"

Whilst Lord Thurlow held the great seal, tables of *fees* taken by *officers in the court of Chancery* remained set up or affixed in their respective offices, and the most trifling gratuity was received with a watchful dubious eye, and cautious hand; but soon after the great seal was resigned by his lordship, those tables began to disappear, and (in 1822) have *never since been renewed:*—gratuities then augmented, until they had no limits: and so early as the year 1801, when increased fees and costs had attained little of the strength and consistency *at which they have since arrived*, the author of these observations stated to the court, "*that the corruption of office had become so great, that it was impossible for a solicitor to transact his business with propriety.*"† To justify such statement, he, by petition, set forth certain payments made, which he insisted ought not to have been demanded or received, and prayed for redress; and he wrote a letter to one of the Lord Chancellor's secretaries, in which he stated an opi-

* Since writing what is in the text, a slight correction has come to hand. Not the whole of John the Second's first reign, only the two last years of it, experienced this disturbance. There was an old sixty-clerk named *Barker*, who was a favourite at court, and had his *entrées*. Cause of favour, this — after pining the exact number of years it cost to take Troy, Mr. Scot, junior, had formed his determination to pine no longer, when providence sent an angel in the shape of Mr. Barker, with the papers of a fat suit and a retaining fee. Him the fellowship constituted for this purpose minister plenipotentiary at the court. Upon an average of the two years, every other day, it was computed, the minister sought, and as regularly obtained, an audience: answer, no less regular—"To-morrow." On this occasion, observation was made of a sort of competition in the arena of frugality between the potentate and his quondam protector, now sunk into his humble friend. Without an extra stock of powder in his hair, never, on a mission of such importance, durst the plenipotentiary approach the presence; consequence, in that article alone, in the course of the two diplomatic years, such an increase of expense, as, though his Excellency was well stricken in years, exceeded, according to the most accurate computation, the aggregate expenditure in that same article, during the whole of his preceding life.

† "On hearing the case *ex-parte* Leicester, 6th Vez. jun. 429, where it was said, 'that a practice having prevailed for a series of years, contrary to the terms of an order in court, and sometimes contrary to an act of parliament, it is most convenient to suppose some ground appeared to former judges, upon which it might be rendered consistent with the practice; and therefore that it would be better to correct practice in future, not in the particular instance.' Whereas the author of these observations thinks that all practice which is contrary to an act of parliament, or to the terms of a standing order of court, originates in corruption, and ought to be abolished in the particular instance complained of, or when, or however, a practice, at variance with law or order, is first made known to the court."

sion, which (until the great charter, and the before-mentioned statutes of King Edward III. and King Richard II., are repealed,) he is disposed to maintain: and which (though otherwise advised by his counsel) he then refused to retract.* The petition came on for hearing, and was supported by Mr. Mansfield and Mr. Romilly, with a spirit, and in a manner, peculiar to those advocates, and satisfactory to the feelings of the petitioner; and resisted by Mr. Attorney-General (Sir Spencer Perceval) and Mr. Richards.

In vain did Mr. Mansfield urge, that "*gratuity was the mother of extortion*," and Mr. Romilly state the intrepidity of his client. On that occasion, the author of these observations, who never heard an *angry judge* give a just judgment, bent beneath a torrent of power and *personal abuse*.

On the coming in of a new administration, in the year 1806, the author of these observations addressed a letter to Lord Erskine, and prepared to further hear his petition; but he was given to understand, by those who had once applauded his efforts,† that a *change of men did not change measures; and since that time the irregular increase of fees and costs* has introduced much confusion into the law.

SECTION XI.

HOW THE OTHER CHIEFS WERE CORRUPTED ACCORDINGLY.

As to what regards the Chief of the Exchequer Judicatory, an indication has been seen in § 8. As to what regards King's Bench and Common Pleas, the like may be seen in § 12. Invitation,—"Take and eat." Seen it has been and will be, whether there was any backwardness as to acceptance.

Forget not that these men were, all of them, his creatures: breath of his nostrils; sheep of his pasture.

* "Mr. Mansfield sent for the author of these observations to his chambers, and there told him, that the Lord Chancellor *had expressed displeasure* at something said in a letter to his secretary, and advised an apology to be made. In reply, the author of these observations told his counsel, that he was prepared to maintain what he had written, and that he would not make an apology; and, having read to Mr. Mansfield the draft of the letter, Mr. Mansfield said that he recollected when Lord Thurlow was made Lord Chancellor, his lordship had mentioned to him in conversation, that he had been told that he was entitled to receive some fees, which he doubted his right to take. And Mr. Mansfield added, that such fees must have been those alluded to in the letter."

† "The letter to Lord Erskine was delivered to the late Mr. Lowton, who had a conversation with the author of these observations thereon, and Sir Samuel Romilly sent for and had his brief to reconsider."

SECTION XII.

HOW THE ILLEGALITY GOT WIND: AND HOW FELIX TREMBLED.

Of the spread of the contagion from Chancery to Exchequer, indications were given in § 8: mention was there made of its having completed the tour of Westminster Hall. What is there said is no more than general intimation: the manner *how*, comes now to be set forth.

Anno 1821, lived a broken botanist and ex-nurseryman, named *Salisbury*. To distinguish him from a namesake of the gentleman-class, *Salisbury minor* is the name he goes by among the Fancy. At the end of a series of vicissitudes, he had sunk into one of those sinks of misfortune, in which, to help to pamper over-fed judges, debtors are squeezed by jailors, out of the substance that should go to creditors. As from Smithfield an overdriven ox into a china-shop—breaking loose one day from his tormentors, Salisbury *minor* found means, somehow or other, to break into one of the great Westminster-Hall shops; in which, as often as a demand comes for the article so mis-called *justice*, bad goods are so dearly sold to all who can come up to the price, and denied, of course, to those who cannot. The china-shop scene ensued. Surprised and confounded, the shopmen exhibited that sort of derangement, which the French express by *loss of head—ils ont perdu la tête*. Under the notion of defence, confessions came out, which come now to be recorded.

Anno 1821, Nov. 21.—(The date is material.) Barnewall and Alderson's King's Bench Reports, Vol. V. p. 266.

"*In the Matter of Salisbury (in Person!)*

"Salisbury *in person* had obtained a rule *nisi*, for one of the tipstaffs of the court to answer the matters of his affidavit. The affidavit stated, that the tipstaff had taken a fee of half-a-guinea, for conveying him from the judge's chambers (to which he had been brought by *habeas corpus*) to the King's Bench prison, such fee being more than he had a right to demand, according to the table of fees *affixed in the King's Bench, in pursuance of a rule of this court*.

"*Gurney* and *Platt* showed cause, upon *affidavits* stating that the fee had been taken *for a very long period of time by all tipstaffs in both courts*, and that it was *allowed* by the *Master* in costs.

"The court, however, adverting to the statutes, 2 Geo. II. c. 22, § 4, and 32 Geo. II. c. 28, § 8, and the rule of court, of *Michaelmas* term, 3 Geo. II., and the table of fees settled in the following year, said, that it was *clear*, that the tipstaff had no right to take any other fee for taking a prisoner from the

judge's chambers to the King's Bench prison, than six shillings, which was the fee allowed him in that table. They, therefore, ordered the fee so taken to be *returned* to the complainant."*

Figure to himself, who can, the explosion. *Bancum Regis* shaken, as by an earthquake— *Bancum Regis* in an uproar! — the edifice it had cost Lord Eldon twenty years to rear, laid in ruins. *We are above parliament*, had said, as above, Lord Eldon. "Alas! no," at the first meeting cried Lord Abbott: "I could not for the life of me, keep where you set us. I had not nerve for it. That fellow .... such impudence! who could have thought it? As to the fees, it is from parliament, you see, we must have them now, if at all. It may take you some little trouble; but you see how necessary it is, and you will not grudge it."

This is not in the report; but it is in the nature of the case, and that is worth a thousand law reports, drawn up by toads under harrows.

Think now of the scene exhibited in and by King's Bench: — culprit and judge under one hood — Guilty or not guilty? Not guilty? O yes, if the Master, whose every-day business it is to *tax* costs, knows not what they are: if the Chief-Justice, whose every-day business it is to *hear discussions* about costs, knows not what they are, or what they ought to be. See now how the account stands: — the money account. Of the 10*s.* 6*d.*, legalized, say 6*s.*: remains confessed to have been extorted, 4*s.* 6*d.*: sub-extortioner's profit, the 4*s.* 6*d.*: head-extortioner's, the 4*s.* 6*d.*, minus x: to find the value of x see above, § 4, and forget not, any more than Lord Eldon and Lord Abbott forgot, that pounds and thousands of pounds are made of pence and shillings.

Mark now another sort of account. Case, a criminal one. Co-defendants, had the list been complete, Tipstaff, Master, and Chief-Justice. Had it been as agreeable to punishers to punish themselves as others, what a rich variety of choice was here! Motion for imprisonment by *attachment* as above: for this is what is meant by *answering affidavits*: indictment for extortion, indictment for corruption, indictment for conspiracy; information for all or any of the above crimes.

Mark now the *denouement*. The case, as above, a criminal one: the crime not punished, but, without the consent of the sufferer, *compounded* for; of the fruit of the crime, the exact nominal amount ordered to be restored: — not a farthing even given to the hapless master-man, by whose sad day's labour thus employed, so much more than the value had been consumed in thus sueing for it: with cost of affidavits several times as much. After seeing in this precedent the utmost he could hope for — what man, by whom like extortion had been suffered from like hands, would ever tax himself to seek redress for it? Redress — administered in semblance, denied in substance. With not an exception, unless by accident, such, or to an indefinite degree worse, is Matchless Constitution's justice!

But the punishment? — where was the punishment? This is answered already. Had the order for redress comprised a sixpence beyond the 4*s.* 6*d.*, the inferior malefactor might have turned upon his principal, and the fable of the young thief, who at the gallows bit his mother's ear off, have been realized: — "Isn't it you that have led me to this? These four-and-sixpences that I have been pocketing — is there any of them you did not know of? Had it not been for this mishap, would not my place have been made worth so much the more to you, by every one of them? Is there any one of them that did not add to the value of the place you will have to dispose of when I am out of it? Why do you come upon me then? Can't you afford it better than I can? Pay it yourself."

But — the two learned counsel, who thus fought for the 4*s.* 6*d.* — *by whom* were they *employed*? — by Tipstaff, Master, or Chief-Justice? Not by Tipstaff, surely: seeing that his cause was so much the Chief-Justice's, he would not thus have flung away his money: he would not have given six, eight, or ten guineas to save a 4*s.* 6*d.*: these, if any, are among the secrets worth knowing, and which House of Commons will insist on knowing. Insist? — But when? when House of Commons has ceased to be House of Commons.

Well, then, this four-and-sixpenny tripartite business — is it not extortion? Is it not corruption? If not, still, for argument's sake, suppose, on the part of all three learned persons — all or any of them — suppose a real desire to commit either of these crimes; can imagination present a more effectual mode of doing it? Till this be found, spare yourself, whoever you are, spare yourself all such trouble as that of crying out shame! shame! contempt of court! calumny! blasphemy!

Contempt of court, forsooth! If contempt is ever brought upon such courts (and, for the good of mankind, too much of it cannot be brought upon them,) it is not in the telling of such things, but in the doing of them, that the culpable cause will be to be found.

Here, then, we see, were statutes — here (according to Lord Eldon's instructions) laid down as per § 9, at the outset — here were rules of court disposed of in the same way, and at one stroke. Anno 1801, in the first year of his reign — disposed of at one stroke, and in the same way. A liberty which might so easily be taken with acts of parliament — hard indeed it would have been, if a judge

* "See the table of fees in the rules of the King's Bench, p. 241." — Here ends the report.

might not take it with the rules of his own court. Conformable (we see here exactly) was this operation to the instructions laid down by him, as per § 9, just twenty years before, anno 1801, in the first year of his reign. As to the rules of court, it was not in the nature of the case that they should present any additional difficulty; rules, which, if it were worth the trouble, and would not make too much sensation, he might have repealed in form at any time.

Be this as it may, here was the exact case, so long ago provided for by Eldonic providence: the case, which, being the principle laid down, with virtual directions given, for the guidance of his next in command, had been made broad enough to fit. "You need not be told (say these directions) how much more obedience-worthy common is than statute law: — law of our own making, than any of the law we are forced to receive from lay-gents. But, though you should find one of our own laws in your way — nay, though with one of *their's*, you should find in your way one of *our's* to give validity and strength to it — never you mind that; your business is to make sure of the fees. At the same time, for decency's sake, while our underlings, who get more of them than we do, are screwing them up (and you may trust *them* for *that*) you of course will know nothing of the matter. Should any unpleasant accident happen — such as the having the table with the lawful fee, in company with the proof of the additional money habitually exacted, bolted out upon you in the face of the public, you will of course be all amazement. Though the thing can never have taken place, but under your own eye — while the prisoner was beginning to be conducted from your own chambers, where you had just been examining him — never had you so much as suspected the existence of any such difference."

As to Lord Abbott, whatever want of disposition on his part there may have been to pay regard to acts of parliament, no such want could there have been as to any such instructions as these of Lord Eldon's. But whether it was that he had not got them by heart, or that when the time came to repeat them and apply them to practice, his heart failed him, — so it was — they were not followed: and so, out came the confession that has been seen: the confession in all its nakedness.

This is not all: not more than three years before, this very fee had been taken into consideration by specially-appointed authority, and the 4*s.* 6*d.* disallowed. Under the head of 'Tipstaff,' "the table of 1760" (say certain commissioners, of whom presently) "directs the fee of 6*s.* to be paid to the tipstaff that carries any prisoner committed at a judge's chambers to the King's Bench prison." .... "The fee of 10*s.* 6*d.* we conceive to have been taken in respect of these commitments .... for twenty-five years, and probably longer: but *we recommend* that the fee of 6*s.* only be received in future."*

Mark now the regard manifested by these commissioners — by these commissioners of Lord Eldon's — for the authority of parliament. Recommendation soft as lambskin: of the extortion, and contempt of parliament, impudent as it was, not any the slightest intimation, unless the rotten apology, thus foisted in instead of censure, be regarded as such. Of this recommendation, the fruit has been already seen: the fee taken, and, for aught that appears, uninterruptedly taken notwithstanding. What? In all the three intervening years, the Chief-Justice, had he never heard of any such recommendation? — never heard a *report*, of which his own court, with the fees belonging to it, were the subject? — never seen any thing of it?

And the commissioners? For what cause disallow the 4*s.* 6*d.*? Only because the act of parliament, and the contempt so impudently put upon it, and the extortion and corruption for the purpose of which the contempt was put, had been staring them in the face. Men, who from such hands accept, and in this way execute, such commissions — is not some punishment their due? Yes, surely: therefore here it is. Public — behold their names! — 1. John Campbell, Esq. Master in Chancery; — 2. William Alexander, Esq. then Master, now, by the grace of Lord Eldon, Lord Chief Baron of the Exchequer; — 3. William Adams, Doctor of Civil Law; — 4. William Osgood, Esq.; — 5. William Walton, Esq.

Accompanied are these recommendations by certain *non-recommendations*. From those as to tipstaffs, reference is made to ditto as to Marshal: and there it is, that, after stating (p. 172) that his profit arises chiefly out of two sources, of which (be it not forgotten) *the tap* is one — with this source before them it is, that (after ringing the praises of it) another of their recommendations is — "that this matter be left in the hands of the court to which the prison more immediately belongs:" in plain English, of the Chief-Justice, whose interest it is maximize the profit in all manner of ways, and of whose emoluments they saw a vast portion, rising in proportion to the productiveness of *this* source. Throughout the whole of the report, except for a purpose such as this, not the least symptom of thinking exhibited: "*fees taken so much, we recommend so much:*" such, throughout, is the

* Report printed for the House of Commons — date of order for printing, 14th May 1818. Sole subject of it: "Duties, salaries, and emoluments as to the Court of King's Bench."

product of the united genius of these five scholars of the school of Eldon.*

See now, Mr. Peel, and in its genuine colours, this fresh fruit of the consistency of your consistent friend. See, in this rich fruit, the effect and character of his commission. Oppose now, Mr. Peel, if you have face for it; oppose now, Mr. Attorney-General, if you have face for it: oppose now, Mr. Attorney-General Copley — for neither must your name be covered up — the permitting of the House of Commons to exercise the functions of the House of Commons.

Oppose now, if you have face for it, "the dragging the judges of the land" before the Catos whom you are addressing — the tribunal of parliament. Fear no longer, Mr. Peel, if ever you feared before, the obtaining credence for your assurance — that it was by Lord Eldon his Majesty was advised to commission Lord Eldon to report upon the conduct of Lord Eldon. Mr. Canning — you, who but two years ago — so light in the scale of sentimentalism is public duty weighed against private friendship, — (and such friendship!) — you, who so lately uttered the so solemn promise never to give a vote that should cast imputation upon Lord Eldon, — watch well, Sir, your time, and when, *these* imputations having come on, votes come to be given on them, repress then, if possible, your tears, and, wrapping yourself up in your agony, hurry out of the House.

SECTION XIII.

HOW THE CHANCELLOR WENT TO PARLIAMENT, AND GOT THE CORRUPTION ESTABLISHED.

THE explosion has been seen. Blown by it into open air, was the scheme of taxing without parliament, and in the teeth of parliament. At the same time, a handle for denunciation was left prominent; and it has been seen how broad an one: a handle too, which some *Williams* or other might at any time lay hold of, and give trouble: the trouble which the driver of pigs has with his pigs — the trouble of collecting honourable gentlemen together, and whistling them in when the question is called for. Delay, therefore, was not now in season. November 21, 1821, was the day on which the breach, as above, was made: a session did not pass without providing for the repair of it: the 10th of June 1822, is the day on which the first stone was laid; and how thorough and complete the repair is, remains now to be shown. The hand of parliament being the only applicable instrument, stooping at last to employ it could not but be more or less mortifying to a workman to whom, for so many years, it had been a football. But, to Lord Eldon, the part of the reed is not less familiar than that of the oak; and what was lost in universally applicable power will be seen gained in ease and tranquillity, reference had to this special and most valuable use of it.

Act 22d July 1822, 3 Geo. IV. c. 66. — Title, "An Act to enable the Judges of the several Courts of Record at Westminster to make Regulations respecting the Fees of the Officers, Clerks, and Ministers of the said Courts."

The preamble has been seen: business of it, skinning over the past illegality, section 6. Business of the first, empowering these same judges to screw up to a maximum, and without stint, the accustomed fees: of the second, to add any number of new ones: of the third, making it, to this effect, the special duty of all underlings to do whatever their masters please: of the fourth, anxiously easing them of the trouble of regulating solicitors' fees, forasmuch as nothing was to be got by it: of the fifth, providing, as has been and will be seen, for the concealment of the fees as before, should more be to be got at any time by their being concealed than by their being known: of the sixth, which is the last, providing compensation for any the smallest fee, which, by accident, should happen to slip out: should any such misfortune ever happen, the losers are not only authorised, but "*required*," to tell "*his Majesty*" of it.

For every possible additional *duty*, an additional fee, or batch of fees: Good. In § 14, or elsewhere, it will be seen how it is that, by multiplying such *duties* under the rose, equity pace, and equity cost, have been rendered what they are.

Everything at "*discretion*," (§ 1:) everything as they "*shall see fit*," (§ 1:) the people of England, all who have redress to seek for injury from without doors — all who have to defend themselves against any of those injuries of which these same judges are the instruments — all who have to defend themselves against injuries, the seat of which is in the pretended seat of redress — all who have to defend themselves against the attacks of any of those villains with whom Lord Eldon has thus placed these judges, together with himself, in partnership — all, all are thus delivered up bound, to be plundered in secret, without stint or controul, by the hands of these same judges. Never could more solicitude have been demonstrated: never more appropriate talent, as well as care, expended in satisfying it: so exquisite the work, the most exquisitely magnifying microscope might be challenged to bring to view a flaw in it. In

* Report of the commissioners on the duties, salaries, and emoluments in courts of justice; — as to the Court of King's Bench. "Ordered by the House of Commons to be printed 14th May 1818."

the style of English legislation, it may be given as a model: as a study — for a young draughtsman, who, for sections a yard long, looks to be paid at so much a word. The same hand, which, had no better interest than the public's been to be provided for, would have left loop-holes, through which the entire substance of the measure might be extracted, has, in this its darling work, as if by an hermetic seal, closed all such crannies. Could this pamphlet have been made to hold it, I should have copied it, and pointed out the beauties of it. For comprehensiveness it has but one rival, and that is in the law called *civil law*. *Quod principi placuit legis habet vigorem*. For *principi*, put *judici*, you have the act of *English law* — the act of George the Fourth.

The enacting part could not be too clear of equivocation: and not a particle is to be found in it. The preamble presented an irresistible demand for equivocation; and here it is. Seen already (in § 5) has been this same preamble, with its essential word *effectually*. Note here the use of it: it is this. The more *effectually* to turn men's minds aside from the idea of the illegality, — causing them to suppose, that though nothing had been done but what was *legal*, strictly legal, yet, to give to what had been done its full effect, legal *machinery* in some shape or other was needed, in addition to such as learned workmen stood already provided with: and that, to give existence to such additional machinery was accordingly the object of the act. Now, the fact is, that no such additional machinery does the act provide or attempt to provide: not an atom of it. What it does, is — easing the hands of the criminals, of whatsoever check they felt applied by the consciousness of their so lately divulged criminality, — thus giving to them the undisturbed power of taxing the people for their own profit, without stint; and, for this purpose, rendering that power which had so long been arbitrary in *fact*, at length arbitrary by *law*.

Remains the clause about keeping the table of fees exposed to view. They are to be "kept hung up" — these table of fees — "hung up in a *conspicuous part* of the" room. Good: and while there hung up, what will be the effect of them? The same as of those hung up in virtue of those former statutes of George II., with the King's Bench rule that followed them. The *place* they are hung up in, is to be a conspicuous one. Good: but the *characters*? of these nothing is said; so that here is a loop-hole ready made and provided.

In the above-mentioned case,* which produced the demand for this act, a document, referred to as a ground of the decision, is — a rule of court, of Michaelmas term, 3 Geo. II.† and "the table of fees settled in the following year." In article 8th of the document intituled "Rules and Orders," &c. mentioned in that same rule of court, which, without any title, is in Latin, in speaking of the table of fees, it is said, that it shall be "fairly written in a plain and legible hand." With this clause lying before him — and he could not but have had it lying before him — with this clause lying before him it is, that the penner of this same act of Lord Eldon's contents himself with speaking about the *place*, and says nothing about the *hand*.

What the omission had for its cause — whether design or accident — judge, whosoever is free to judge, from the whole complexion of the business. Not that even in this same rule of court, with its "*fair and legible hand*," there was anything better than the semblance of honesty. Tables of benefactors to churches and parishes — tables of turnpike tolls — were they, even in *those* days, *written in a fair and legible hand*? No: they were painted in print hand, as they are still, in black and gold. But, if instead of *fair and legible*, the characters should come to be microscopic, and as illegible a scrawl as can be found — suppose in the grim-gribber hand called *court hand* — a precedent of this sort will not be among the authorities to be set at nought: this will not be among the cases in which, according to Lord Eldon's consistency, as per page 356, "It would be more consistent to suppose some ground appeared to former judges, upon which it" (the act of parliament, or the rule of court, or both) "might be rendered consistent with the practice" — meaning, with the practice carried on in violation of them.

Lord Eldon's Act, or *The Eldon Act*, should be the style and title of this act. Precedent, *Lord Ellenborough's Act*, — so styled in a late vote paper of Honourable House:‡ Lord Ellenborough's act, sole, but sufficient and characteristic, monument, of the legislative care, wisdom, and humanity of that Peer of Parliament, as well as Lord Chief Justice.‖

* 1831. Barnewell and Alderson, v. 266.

† See the book intituled "Rules, Orders, and Notices, in the Court of King's Bench . . . to the 21 Geo. II. inclusive." 2d edit. 1747. Page not referable to, there being no paging in the book!

‡ May 17th, 1825.

‖ Note, that "*effectually*" as all *future* corruption is sanctioned, nothing is said of any that is *past*. If, in the situation in question, the word *responsibility* were anything better than a mockery, the fate of Lord Macclesfield — and on so much stronger grounds — would await Lord Eldon, his instruments, and accomplices. But, forasmuch as all such responsibility *is* a mere mockery, the only practical and practicable course would be — for some member (Mr John Williams for example,) to move for a *bill of indemnity* for them: which motion, to prove the needlessness of it, would call forth another stream of Mr. Peel's eloquence: a reply might afford no bad

As to the Chancellor's being the *primum mobile* of the act, — only for form's sake, and to anticipate cavil, can proof in words be necessary. The bill being a money bill, it could not make its first appearance in the House in which Lord Eldon rules these matters by his own hand. The members, by whom it was brought into the only competent house, were the two law-officers: and that, by these two official persons, any such bill could, consistently either with usage or propriety, have been brought in otherwise than under the direction of the head of the law, will not be affirmed by any one. The Act, then, was LORD ELDON'S Act.

SECTION XIV.

HOW THE HEAD OF THE LAW, SEEING SWINDLING AT WORK, CONTINUED IT, AND TOOK HIS PROFIT OUT OF IT.

SWINDLING is an intelligible word: it is used here for shortness, and because familiar to everybody. Look closely, and see whether, on this occasion, it is in any the slightest degree misapplied.

By statute 30 Geo. II. c. 24, § 1 — "All persons who knowingly or designedly, by false pretence or pretences, shall obtain from any person or persons, money .... with intent to cheat or defraud any person or persons of the same .... shall be fined or imprisoned, or .... be put in the pillory, or publicly whipped, or transported .... for .... seven years."*

1. "*All persons*," says the act. If, then, a *Master in Chancery*, *so* comporting himself as above, is not a person, he is *not* a *swindler*: if he *is* a person, *he is*.

2. And so, in the case of a *commissioner of bankrupts*, if any one there be who has *so* comported himself.

3. So likewise in the case of any other functionary, holding an office under Lord Eldon.

4. So likewise in the case of every *barrister*, practising in any of the courts in or over which Lord Eldon is judge; in the case of every such barrister, if *so* comporting himself.

5. Add, every *solicitor*.

If, however, it is true, as indicated in the samples given in § 2, that in the case of the solicitor, in respect of what he does in this way, he is, by the subordinate judge (the aforesaid Master) not only to a great extent *allowed*, but at the same time to a certain extent *compelled*, — here, in his case, is no inconsiderable alleviation: in the guilt of the official, that of the non-official malefactors is eclipsed, and in a manner swallowed up and drowned.

So far as regards Masters in Chancery: to judge whether, among those same subordinate judges under Lord Eldon, there be any such person as a *swindler*, and if so, what number of such persons, see the sample given in § 2.

Same question as to commissioners of bankrupts, concerning whom, except as follows, it has not as yet been my fortune to meet with any indications. Lists of these commissioners, 14: in each list, 5: all creatures, all removable creatures — accordingly, all so many virtual pensioners during pleasure — of Lord Eldon. Further subject of inquiry, whether these groups likewise be, or be not, so many gangs of his learned swindlers.

Indication from the Morning Chronicle, Friday, April 15, 1825.

At a common council, Thursday, April 14, information given by Mr. Favel. Appointment made by list 2d of these commissioners, for proof of debts in a certain case: hour appointed, that from 12 to 1; commissioners named in the instrument of appointment, Messrs. Glynn, Whitmore, and Mr. M. P. Horace Twiss. Attendance by Mr. Glynn, none: by Mr. Whitmore, as little: consequence, nothing done: by Mr. Horace Twiss, an hour and a half after the commencement of the appointed time, half an hour after the termination of it, a call made at the place. Had he even been in attendance from the commencement of the time, instead of stepping in half an hour after the termination of it, still, commissioners more than one not being present, no business could (it seems) have been done. To what purpose, then, came he when he did, unless it was to make a title to the attendance-fee? Moreover, for this *non-attendance* of theirs, Messrs. Glynn and Whitmore, have they received their *attendance*-fees? If so, let them prove, if they can, that they are not swindlers. Mr. Horace Twiss, who does not attend any part of the time, but steps in half an hour after, when his coming cannot answer the purpose, has *he* received for that day any attendance-fee? If so, then comes the same task for him to perform. Mr. Favel's candour supposes some excuse may be made for Mr. Twiss: if so, a very lame one it will be. An option he should have had to make is, to do his duty as a commissioner of bankrupts, and not be a member

occasion for Whig wigs, could a decent cloak be found for their departed saint.

* Let it not be said, that to come within this act it is necessary a man should have proposed to himself the pleasure of being, or of being called, a *cheat*; the man the act means, if it means any man, is he who, on obtaining the money by any false pretence, intends to convert it to his own use. Instead of the words *cheat* and *defraud*, words which — and not the less for being so familiar — require a definition, better would it have been, if a definition such as the above had been employed. But logic is an utter stranger to the statute-book, and without any such help from it as is here endeavoured to be given, the act has been constantly receiving the above interpretation in practice.

of parliament, or do his duty as a member of parliament (oh, ridiculous!) and not be a commissioner of bankrupts: — a commissioner of bankrupts, and, as such, one of Lord Eldon's pensioners. Convinced by his commissionership of the immaculateness of his patron, commissioner makes a speech for patron, much, no doubt, to the satisfaction of both. Should a committee be appointed to inquire into Chancery practice — there, Mr. Peel, there — in Mr. Twiss, you have a *chairman* for it.

Meantime, suppose, for argument's sake, Mr. Twiss comporting himself in any such manner as to give just cause of complaint against him — be the case ever so serious — to what person, who had any command over his temper, would it appear worth while to make any such complaint? To judge whether it would, let him put the question to Mr. Lowe, as per § 10.

These men — or some (and which?) of them — being so many swindlers, — he who, *knowing* them to be so, *protects* them in such their *practices*, and shares with them — with all of them — in their *profits*, what is *he*? Is not he too either a *swindler*, or, if distinguishable, something still worse? If, with strict grammatical or legal propriety, he cannot be denominated a receiver of *stolen* goods, — still, the *relation* borne by him to these swindlers, is it not exactly that which the *receiver* of stolen goods bears to the *thief*? *Masters* in Chancery, 10; *Commissioners of Bankrupts*, 90; together, 100; and, upon the booty made by every one of them, if any, who is a swindler, does this receiver of a portion of their respective gains make his profit: these same swindlers, every one of them, made by him what they are —— Stop! Between the two sorts of receivers, — the thief-breeding and the swindler-breeding receivers, — one difference, it is true, there is. The *thief-breeder*, though, in so far as in his power, he gives *concealment* to his confederates, he does not, because he cannot, give them *impunity*: — whereas the *swindler-breeding* receiver, seeing that he can, gives both.

Masters in Chancery — creatures of this same creator, almost all, if not all of them — is there so much as one of them who is not a swindler — an habitual swindler? Say no, if you can, Lord Eldon! Say no, if you can, Mr. Secretary Peel! Deny, if you can, that your Mentor is in partnership with all these swindlers. Deny it, if you can, that, out of those who have accepted from him the appointment of reporting him blameless, two are of the number of these same swindlers.

"Oh, but," by one of his hundred mouthpieces, cries Lord Eldon, "nothing has he ever known of all this: nothing, except in those instances in which his just displeasure at it has well been manifested. Whatever there be that is amiss, never has been wanting the desire to rectify it — the anxious desire .... But the task! think what a task? think too of the leisure, the quantity of leisure necessary! necessary, and to a man who knows not what it is to have leisure! Then the wisdom! the consummate wisdom! the recondite, the boundless learning! Alas! what more easy than for the malevolent and the foolish to besputter with their slaver the virtuous and the wise!"

Not know of it indeed? Oh hypocrisy! hypocrisy! The keeper of a house of ill-fame .... to support an indictment against him, is it necessary that everything done in his house should have been done in his actual presence? Ask any barrister, or rather ask any solicitor, whom retirement has saved from the chancellor's prospect-destroying power — ask him, whether it be in the nature of the case, that of all the modes in which depredation has been practising in any of his courts, there should have been so much as one, that can ever have been a secret to him?

No *time* for it, indeed! Of the particular *time* and *words*, employed by him in talking backwards and forwards, in addition to the already so elaborately-organized general mass, as if to make delay and pretences for it, a thousandth — a ten thousandth part — would have served an honest man anywhere for a reform: a reform which, how far soever from complete, would suffice for striking off two-thirds of the existing mass, and who can say how much more?

Have you any doubt of this, Mr. Peel? — accept, then, a few samples: —

1. Reform the first. (Directed to the proper person.) *Order* in these words: *Charge for no more days than you attend.* Number of words, eight. At the Master's office, off go two-thirds of the whole delay, and with it, of the expense.

2. Reform the second. *Text: On every attendance-day, attend ten hours. Paraphrase:* Attend these ten, instead of the five, four, or three, on which you attend now. For your emolument, with the vast power attached to it, give the attendance which so many thousand other official persons would rejoice to give for a twentieth part of it.

3. A third reform. *In the year there are* 12 *months: serve in every one of them. Months excepted for vacation, those in which no wrong that requires redress is practised* anywhere.

4. A fourth reform. You are one person: any clerk of your's, another. The business of any clerk of your's is to serve *with* you, not *for* you. Serving by another is not serving, but swindling.

Small as is the number of words in the above proposed orders, anybody may see how many more of them there are than are strictly needful to the purpose of directing what it is desired shall be done.

Numerous are the reforms that might be added: all of them thus simple; many of them still more concisely expressible.

Oh, but the *learning* necessary! the recondite lore! fruit of mother Blackstone's twice twenty years' lucubrations! Learning indeed! Of all the reforms that have been seen, is there a single one that would require more learning than is possessed by his lordship's housekeeper, if he has one, or any one of his housemaids?

Wisdom necessary for anything of all this? Oh hypocrites! nothing but the most common of all common honesty.

Of those, whom, because unsuccessful poor and powerless, men are in the habit of calling *swindlers*, the seat — that of many of them at least — is in the *hulks:* of those hereby supposed swindlers, whom, because rich and powerful, no man till now has ever called *swindlers* — the seat — the seat of *ten* of them at least — is in the *House of Lords*. As between the one class and the other, would you know in which, when the *principle of legitimacy* has given way to the *greatest-happiness principle*, public indignation will press with severest weight? Set them against one another in the balance.

1. *Quantity of mischief* produced — is that among the articles to be put into the scale?

Nothing, in comparison, the mischief of the second order: nothing the *alarm* produced by the offence of him whose seat is in the *hulks*. Against all such offences, each man bears what, in his own estimation, is little less than an adequate security — his own prudence: a circumstance by which the *swindler* is distinguished, to his advantage, from the *thief*. No man can, for a moment, so much as fancy himself secure against the hand of the swindler, if any such there be, whose seat is in the *House of Lords*. United in that irresistible hand, are the powers of fraud and force. Force is the power applied to the victim; fraud, the power applied to the mind of the public; applied as, with but too much success, it has been hitherto, to the purpose of engaging it to look on unmoved, while *depredation*, in one of its most shameless shapes, is exercised under the name of *justice*.

2. *Unpremeditatedness* — is it not in possession of being regarded as operating in extenuation of moral guilt? *Deliberateness*, as an aggravation? Deliberateness, does it not, in case of homicide, make to the offender the difference between death and life, under the laws of blood so dear to honourable gentlemen noble lords and learned judges? Of those swindlers, whose seat is in the hulks, how many may there not be, whose delinquency may have been the result of a hasty thought begotten by the craving of the moment? Answer and then say — of the swindler, if any such there be, whose seat is in the House of Lords, the offence, is it not the *deliberate*, the *regularly repeated*, the *daily* repeated, the *authentically recorded* practice?

3. *Quantity of profit* made — is that among the circumstances that influence the magnitude of the crime? For every penny made by the swindler whose seat is in the *hulks*, the swindler, if any, whose seat is in the *House of Lords*, makes 6*s*. 8*d*.: six-and-eight-pence? aye, six-and-eight-pences in multitudes.

4. *Indigence* — is it not in possession of being regarded as operating in extenuation of moral guilt? All have it of those whose seat is in the *hulks*. No such extenuation, but on the contrary, the opposite aggravation have they, if any, whose seat is in the *House of Lords*.

5. *Uneducatedness* — is it not in possession of being regarded as operating in extenuation of moral guilt? Goodness of education, or, at least, the means of it, as an aggravation? The extenuation, you have in the case of those whose seat is in the *hulks:* the aggravation, in the case of those, if any, whose seat is in the *House of Lords*.

6. *Multitude of the offenders* — does *that* obliterate the crime? Go then to the hulks and fetch the swindlers who serve *there*, to sit with their fellows, if such there be, who serve in the House of Lords.

7. *Long continuance* of the practice — is it in the nature of that circumstance to obliterate the crime? Much longer have there been swindlers out of the Master's office than there can have been in it, The earliest on record are those who "spoiled the Egyptians:" but with them it was all pure fraud: no force was added to it.

Learning — appropriate learning — of demand for this endowment, assuredly there is no want: and not only for this, which every lawyer speaks of, but for original and originating genius — an endowment which no lawyer ever speaks of. Adding to the mass in the *Augean stable*, every *ox* had wisdom enough for — every ox that ever was put into it: to employ a river in the cleansing of it, required, not the *muscle*, but the *genius* of a Hercules.

Wisdom? Yes, indeed: but of what sort? Not that which is identical with, but that which is opposite to, Lord Eldon's. Years spent in the pursuit of those which we have seen to be the *actual ends of judicature*, four-and-twenty. True: but by every year thus spent, a man will have been rendered, not the more, but so much the less apt, for pursuing the *ends of justice*. Lord Eldon serve the ends of justice? He knows not even what they are. Ask him what they are — at the end of half an hour employed in talking backwards and forwards, he will conclude with his speech in *ex-parte Leicester*, and the passage that has been seen in it. Ask what are

the ends of justice? Thirty paces are more than I need go, to see boys in number, any one of whom, when the question had found him mute, or worse than mute, could answer and take his place.

Yes: in that man, in whom the will has been vitiated as his has been, the understanding — sure as death — has been vitiated along with it. Should a pericranium such as his ever meet the hand or eye of a Gall or a Spurzheim, they will find the organ of justice obliterated, and the organ of *chicane*, — a *process* from their organ of *theft* grown up in the place of it.*

If I misrecollect not, this section has been referred to for something to be said, as to the profit capable of being derived from the source here spoken of: if so, the reader's indulgence must be trusted to for a respite, till the entire of the judges'-salary-raising measure has been found ripe for a view to be taken of it.

SECTION XV.

HOW KING GEORGE'S JUDGE'S IMPROVED UPON THE PRECEDENT SET BY KING CHARLES'S IN THE CASE OF SHIP-MONEY. *See above*, § 9.

THE improvement was an altogether simple one. The pocket, which received the produce of the tax imposed by King Charles's judges, was the King's. The pocket, which received and receives the produce of the tax imposed by King George's judges, was and is their own.

Now for consistency — now for the use of this same principle as a precedent: a precedent set, and with this improvement, in the seats and sources of what is called justice, and thence offered to the adoption of the other departments. But what applies to this purpose will be better understood when the consummation given to the system by the pending measure comes to be brought to view.

What *they* did, they contented themselves with doing, as it were, by the *side* of parliament: giving, indeed, their sanction to the operations of an authority acting without parliament, — but not, of their own authority, taking upon themselves to obstruct and frustrate the operations of parliament. Never did *they* levy war against the authority of parliament: never did *they* make known by express terms, that whatever parliament had ordained should, as they pleased, go for anything or for nothing: never did they adjourn obedience *sine die*: never did they say — "*A practice having prevailed . . . contrary to an act of parliament . . . it would be better to correct it in future, not in that particular instance.*"†

SECTION XVI.

HOW TO BE CONSISTENT, AND COMPLETE THE APPLICATION OF THE SELF-SERVING PRINCIPLE.

Now as to consistency.—You, Lord Eldon, you who practise consistency,—you, Mr. Peel, you who admire it,—go on as you have begun. Assisted by your official instruments, you have planted in the statute-book, after having established it in practice, the self-serving, the self-corrupting, the self-gorging principle. You have rooted it in one department: plant offsets from it in the others. You have covered

* How to grant licence under the guise of censure:

Extract from the Examiner, Nov. 7, 1824:—

"*The Six-Clerks.*—In the Court of Chancery, on Monday, the following conversation occurred. An affidavit having been handed to the Lord Chancellor, his lordship asked, 'what is the meaning of "Agent to a Six-clerk," which I see there? What is his business?'—Mr. Hart's client stated, that the agent was a person who manages the business for a Six-clerk.—Lord Chancellor: 'And what does the Six-clerk himself?'—Solicitor: 'Attends the Master.'—Lord Chancellor: 'Then he is entirely out of the business of his own office: he does nothing in it?'—Solicitor: 'Nothing, my lord.—The Lord Chancellor (after a pause:) 'When I came into this court, the Six-clerks were the most efficient solicitors in the Court of Chancery. Some of the most eminent solicitors were clerks of that class, and used to transact their business, and draw up minutes with such ability, that we had few or no motions to vary minutes. But now the Six-clerk abandons his business to a person who knows nothing at all about it. 'Tis no wonder, then, that delays have crept into the practice, which we formerly knew nothing of. However, before it proceeds further, I'll take care that solicitors in this court shall be obliged to transact their business in person.'"

'When I came into this court:' that is to say, four-and-twenty years ago. Good, my Lord, and where have you been ever since? Incessant have been such threats: constant the execution of them, with the same punctuality as in this case. What solicitor, what barrister, is there, that does not understand this? Who that does not know, that where official depredation is concerned, what in English is a threat, is in Eldonish a licence?

When, as per sample in § 2, page 351, £700 was exacted in reduction of a demand of we know not how much more, for office copies of a particular of sale — office copies for which there was as much need, as for those which, according to the story, were once taken of the Bible — on that occasion was there any of this vapouring? Silent as a mouse was this Aristides, who could not endure the existence of the harmless agent, whose agency consisted in looking over the books, to see that his employers, the six drones, were not defrauded of the per-centage due to them from the labours of the sixty working-bees. But this summer-up of six-and-eightpences was an intruder. Lord Eldon's patronage was not increased by him, while official secrets were open to him. Such was his offence.

† Lord Eldon, in VI. Vesey, jun. p. 433, as above, p. 366.

with it the field of justice: go on with it, and cover with it the field of force.

Repair, in the first place, the ravage so lately made by the fabled dry-rot; that dry-rot which, not content with timber, rotted the china and the glasses. Give to the Duke of York the power of settling the pay of his subordinates, and levying, by his own order, the amount of it. . . . What! do you hesitate? Not to speak of loyalty, all pretence, then, to consistency is at an end with you. Dignity is, in your creed, the one thing needful: your judges are brimful of it, at least if it be in the power of gold to make them so. So far, "everything is as it should be." But the commander-in-chief — not to speak of the heir to the crown — has he not, in his situation, demand enough for plenitude of dignity? And forasmuch as, in your mathematics, Mr. Robinson — applied to administration of justice, aptitude is *as* dignity,* — say, if you can, how the same proposition should fail when applied to the still more dignified function of wielding military force?

Apply it next to the navy. For the benefit of Lord Melville and his Croker, give legality to ship-money, as, for the benefit of Lord Eldon and his Abbott, you have given it to extortion and denial of justice. Legalizing that mode of supply, now in the 19th century, you will add to it the improvements you have found for it in your own genius and your own age. You will not, as did the creatures of Charles I. make the *faux pas* of putting the produce into the King's pocket. No; you will remember what that experiment cost his Majesty's predecessor. You will, if you can get leave of envy, — you will put it into the pockets of Lord Melville, Mr. Croker, and their friends; and thus, in the navy department likewise, "will everything be as it should be."

Rhetoric and fallacy all this (says somebody.) Fallacy? Not it, indeed: nothing but the plainest common sense. Suffer not *yourself* to be blinded by one of those fallacies which timidity and self-distrust are so ready to oppose to indisputable truth. Say not to yourself, *all this is strong, therefore none of it is true.*

What *I do not* say is, that, in the two supposed cases, the *mischief* of the application is as great as in the real one.

What I *do* say is, that the *principle* would not be *different*. The principle different? no: nor the course taken more palpably *indefensible*.

* In Mr. Robinson's speech of 16th May 1825, as per *Globe and Traveller* of the next day, no less than *ten* times (for they have been counted) was this *ratio* assumed in the character of a *postulate*: assumed by the finance master, and by his scholars, *nemine contradicente*, acknowleged in that character: every one of them, for self, sons, daughters' husbands, or other *et cæteras*, panting, even as the hart panteth after the water-brooks, for the benefit of it. Number of repetitions, *ten* exactly; for Mr. Robinson had not forgot his Horace — with his *decies repetita placebit*.

SECTION XVII.

HOW LORD ELDON PLANNED AND ESTABLISHED, BY ACT OF PARLIAMENT, A JOINT-STOCK COMPANY, COMPOSED OF THE WESTMINSTER-HALL CHIEFS, AND DISHONEST MEN OF ALL CLASSES.

In general, joint-stock companies are no favourites with Lord Eldon; but general rules have their exceptions.

That between dishonest men of all classes, and judges taking payment to themselves out of a fund common to both, the strictest community of interest has place, has been proved, if anything was ever proved, over and over. A tax, into what pocket soever the money goes, cannot be imposed on *judicial pursuit*, but, to all who cannot advance the money, justice is denied, and all those who fail to do what has thus been rendered impossible to them, are delivered over to injury in all shapes, at the hands of all persons who are dishonest enough to take advantage of the licence so held out. A tax, into what pocket soever the money goes, cannot be imposed on the necessary means of *judicial defence*, but it offers, to all who can advance the money, and are dishonest enough to accept the offer, an instrument, wherewith, by the power of the judges, yet without their appearing to know anything of the use thus made of it, injury, in almost every imaginable shape, may be inflicted, — inflicted with certainty and impunity, and the correspondent sinister profit reaped, at the charge of all those who are not able to purchase the use of that same instrument for their defence. Thus, in so far as the produce of the exaction goes into the judge's pocket, the interest of the dishonest man cannot, in either of those his situations, as above, be served, but the interest of the judge is served along with it.

Of a partnership contract, whatever else be among its objects, one object as well as effect, is the establishing a community of interest between the several members: and, if the persons acting so described are not dishonest; and if, between them and the judge in question, a community of interest is not formed; let any one say, who thinks he can, in what more indisputable way it is in the power of man to be dishonest; and whether, between such a set of men and a set of dishonest judges, it would be possible for a community of sinister interest to be formed.

Not less difficult will it be found to say, how any man, judge or not judge, can fail to be dishonest, who, receiving money in proportion, consents, and with his eyes open, to

the habitual promotion and production of injury in all imaginable shapes, in both or either of the situations described as above.

True it is that, in general, joint-stock companies, any at least that can be named on the same day with this for magnitude, have not been formed without *a charter:* and that, on the occasion here in question, no charter has been employed. Not less true is it, that in the establishment of other joint-stock companies, the power of parliament has been employed; and that, in the establishment of the joint-stock company in question, that hand, so superior to all morality, has, in the manner shown in § 13, most diligently and effectually been employed. In the concession of a charter, the hand of the Chancellor is regularly employed: and, in the passing of the acts of parliament in question, it has been shown, how that same learned hand has not been less primarily and effectually employed.

Such being the *partnership*, now as to the terms of it. A species of partnership as well known as any other is, — A. finds money; B. skill and labour. Of the partnership here in question, such are the terms.

Head of the firm, beyond all dispute, Lord Eldon. Found by him, in by far the greatest abundance, skill, labour, power, and example. Looked for by him, and received accordingly, profit in correspondent abundance. Behold, then, the firm of Eldon and Co. By what other name can the firm, with any tolerable degree of propriety, be denominated?

Apprised of the existence of this partnership, *Judge and Co.* is the denomination by which, for I forget what length of time — some thirty or forty years probably — in print as well as in conversation, I have been in the habit of designating it: not a pen, not a voice, having ever raised itself to controvert this undeniable truth. But though established by intrinsic power — by that power which is so much in the habit of setting at nought that of parliament — never, till Lord Eldon stood up, and with so much ease carried the matter through as above, was this Coryphæus of joint-stock companies established by an express act of parliament.

One all-embracing and undeniable truth, when the public mind is sufficiently familiarised with it, will remove doubts and difficulties in abundance; it will serve as a key to everything that, in this country, has ever been done in the field of judicial procedure. From the Norman conquest down to the present time, diametrically opposite to the ends of justice have been the actual ends of judicature: judicial establishment and judicial procedure included, but more especially judicial procedure. Paid, as judges have been, by fee — paid by taxes, the produce of which has all along been liable to be augmented, and been augmented accordingly by themselves, at no time could the system have been in any better state. Suppose that, in those their situations, and *that* in the most barbarous times, judges would have for the end of action the happiness of suitors? As well might you suppose that it is for the happiness of negroes that planters have all along been flogging negroes; for the good of Hindoos that the Leadenhall-street proprietors have all along been squeezing and excoriating the sixty or a hundred millions of Hindoos.

SECTION XVIII.

HOW THE KING'S CHANCELLOR EXERCISED DISPENSING POWER.

To those who have read §§ 9 and 10, or § 9 alone, this can be no news. But of the nature and magnitude of the dispensing power thus assumed and exercised by Lord Eldon, conception may be helped by a few words more.

James the Second and his advisers operated openly and rashly. Prerogative in hand, they ran a tilt against parliament law. Lord Eldon was Lord Eldon. In a cause of no expectation, out of sight of all *lay-gents*, — out of sight of all men but his co-partners in the firm, of which he is the head, — he laid down the fundamental principle. When, under a so unexpected opposition, his good humour, habitual and pre-eminent as it is, forgot itself for a while, — not so his prudence. Taking instruction from the adversary, he made a full stop, nor, till the impediment ceased, could he be made to move a step, by all the importunity we have seen employed, in the endeavour to urge him on towards the consummation of his own schemes.

Still out of the sight of *lay-gents*, when, on the cessation of the interregnum, he remounted the throne, and, like Louis XVIII. reaped the benefit of whatever had been done for the consolidation of it by the usurper, — the obstructor, persevering, as we have seen him, being for the time dispirited by the rebuff received from Lord Erskine, under the tuition of the learned Jack-of-both-sides, — still, he imposed not any fresh tax, contenting himself with increasing — in the manner and to the extent, samples of which have been seen in § 2 — the produce of those he found established. Nor was this the whole of his labour or of his success: for we have seen how (still out of sight of the *lay-gents*) at times and in ways altogether invisible to unlearned eyes (at what tables, and over what bottles, must be left to imagination) he had succeeded in completely impregnating his Westminster-hall creatures, and, in their several judicatories, giving complete establishment to his plan, as well in principle as in practice.

Then again, when another unexpectable mishap befel him, and the webs, which the united strength of so many learned spiders had, for such a length of time, been employed in weaving, were broken through and demolished altogether by the irruption of one poor hunted fly, — even this shock, severe as it could not but be, did not make him relinquish his high purpose. Bold, where boldness was requisite, pliant where pliancy, all the sacrifice it brought him to was — the accepting from parliament, and that too with improvement, the consummation of the ambitious and rapacious plan, at the commencement of which the nature of the case had obliged him to act, though with all prudent and practicable secresy, against parliament.

Thus much as to the *mode* — now as to *effect*: and the *extent* given to it. *James the Second*, with his dispensing power, placed a catholic priest in the Privy Council, and a catholic, or no less obsequious protestant fellow, in an Oxford college. *John the Second* gave the dispensing power, not only to himself but to all his underlings, covering thus, with a so much more profitable power, the whole field of judicature.

SECTION XIX.

CHARACTER EVIDENCE.

AGAINST specific indications such as these, Honourable House and the Old Bailey receive a sort of evidence, which is neither quite so easily obtained, nor quite so efficient when obtained, in the Old Bailey as in Honourable House. It may be called, and, for aught I know, is called, *character evidence*. *Quantity*, in pretty exact proportion to that of the hope and fear, of which he, who is the subject of it, is the object. *Quality*, determined by the same causes. *Colours*, two — white and black.

But for my old friend, Mr. Butler, no such evidence as this would have been offered — no such section as this have been written. Nor yet, if in the laud heaped up by him upon Lord Eldon, he had contented himself with using his own hand. But the hand, to which he has assigned this task, is the hand of Romilly: that confidence-commanding and uncontradictable hand, which for this purpose, resurrection-man like, he has ravished from the tomb.

Having, in the course of between thirty and forty years' intimacy, been in the habit of hearing sentiments of so widely different a tendency, on every occasion, delivered in relation to this same person, — silence, on an occasion such as the present, would have been so little distinguishable from assent, that I could not sit easy without defending myself against what might otherwise have appeared a contradiction, given to me by my departed and ever-lamented friend.

In relation to Lord Eldon, I have no doubt of Romilly's having used language, which, at a distance of time, and for want of sufficient discrimination, might naturally and sincerely enough, by a not unwilling hand, have been improved into a sort of panegyric thus put into his mouth. But, by the simple omission of one part of it, the strictest truth may have the effect of falsehood.

With a transcript of the panegyric in question, or of any part of it, I will not swell these already too full pages. Suffice it to mention my sincere wish, that it may be compared with what here follows.

By my living friend, — my departed friend, I have reason to think, was never seen but in a mixed company: assured I well am, and by the declaration of my departed friend, that between them there was no intimacy. Between my departed friend and myself, confidence was mutual and entire.

Romilly was among the earliest, and, for a time, the only efficient one of my disciples.*

To Romilly, with that secresy which prudence dictated, my works, such as they are, were from first to last a text-book: the sort of light in which I was viewed by him, was, in Honourable House, in his own presence, on an ever-memorable occasion, attested by our common friend, Mr. Brougham.†

Not a *reformatiuncle* of his (as *Hartley* would have called it) did Romilly ever bring forward, that he had not first brought to me, and conned over with me. One of them — that in which Paley's love of arbitrary power was laid open — was borrowed from my spiders, under whose covering they may still be found. The project so successfully opposed by Lord Eldon's Sir William Grant — the endeavour to prevail upon honourable gentlemen to divest themselves of the power of swindling in their individual capacities, — was, to both of us, a favourite one. Nothing of this sort could ever come upon the carpet, but the character of Lord Eldon came of necessity along with it: a few lines will give the substance of volumes. The determinate opposer of everything good; the zealous, able, and indefatigable supporter of everything evil, from which, to the ruling one or the ruling few, reputed good, in any the smallest quantity, at the expense of the many, appeared derivable.

"Well! and what chance do you see of the

* He was brought to me by my earliest — the late *George Wilson* — who, after leading the Norfolk circuit for some years, retired with silk on his back to his native Scotland.

† Hansard's House of Commons Debates, 2d June 1818. "He (Mr. Brougham) agreed with his hon. friend, the member for Arundel, Sir S. Romilly, who looked up to Mr. Bentham with the almost filial reverence of a pupil for his tutor."

evil genius's suffering it to pass?" This, on one part was the constant question. "Why .... just now, things are so and so:" stating, or alluding to, some hold, which, at the moment, he thought he might have upon Lord Eldon. A favourable circumstance was — that, though regarding the M. P. with the eye with which he could not but regard one of the most troublesome of his political opponents, — the Chancellor — such, in his estimation, was the legal knowledge and judgment of Romilly — was in the habit of paying to the arguments of this advocate not less, but even more, deference, than, in the eyes of the profession, was always consistent with justice; so at least I have heard, over and over again, from various professional men. In Romilly's acquirements and character he beheld a leaning-stock, the value of which he knew how to appreciate.

Now for the like, through channels less exposed to suspicion: —

"The state of the court of Chancery is such, that it is the disgrace of a civilized society." These are the words furnished me, in writing, by a friend, as among the very words used by Romilly, but a few months before his death, in a mixed company. It was at a *place* which, for several days of his last autumn (a place I occupied in Devonshire,) afforded to the relator various free conversations, besides those at which I was present. — General result: — "Lord Eldon himself the cause of many of the abuses; of the greater part of the others, the remedy always in his own hands."

"If there is a hell, the court of Chancery is hell." Words these, given as the very words uttered by Lord Erskine but a few weeks before his death, in conversation with another person, from whom I have them under his own hand.

Both relators most extensively known, and not more known than trusted. On any adequate occasion, both papers should be visible.

Judex à non judicando, ut lucus à non lucendo, the sort of service of all others for which Lord Eldon is not only most eminently but most notoriously unfit,* is the very service for the performance of which his unexampled power may have been originally

* I would willingly have said *most unfit*, but truth, as will be seen, forbids me.

Saul and Jonathan were Lord Eldon and Lord Redesdale. Lord Eldon, attorney-general; Lord Redesdale, solicitor-general: Chancellors — Lord Eldon of England; Lord Redesdale, of Ireland. Scholars of the school of Fabius, but with one difference: — by the Roman cunctation, everything was perfected: by the English and Irish, marred.

The London laid a wager with the Dublin Chancellor, which should, in a given time, do least business. Dublin beat London hollow.

Witness, Earl Grey, — in those days Lord Howick.[a]

[a] Cobbett's Debates, IX. 731, July 3, 1807. House of Commons. *Pensions to Chancellors.* From the speech of Lord Howick, now Earl Grey.

"When he" (Mr. Ponsonby) "succeeded to the office," (succeeded to Lord Redesdale) "the Chancery court of Dublin was in arrears for *six* years of *notices*, for *six hundred motions*, and for *four hundred and twenty-seven causes*: — when he" (Mr. Ponsonby) "quitted office, he had got under *all the notices* and *motions*, and had brought down the *causes* to *two hundred*, besides going through the current business. Had he remained in office a few months longer, not a single *cause* would have been left undetermined."[b]

[b] This single incident speaks volumes: it paints *Matchless Constitution* to the life. Take two traits, out of more.

1. Profundity and universality of the contempt of human happiness and justice, in the breasts of the ruling and would-be-ruling few.

During the whole six years, during which Lord Redesdale, with his unfitness staring him and everybody in the face, was paralyzing justice and manufacturing misery by wholesale — not only his creator silent, but every member of the *aristocracy* on both sides, in Ireland as well as in England. Down to this moment, never would anybody have heard of it, but for a personal squabble about Mr. *Ponsonby*, and a clause in his pension of retreat.

Mr. Ponsonby, with his matchless, and, but for admission, incredible aptitude, — turned out in Ireland! Lord Eldon, after his six years perpetually demonstrated inaptitude, restored, and continued with continually increasing influence!

As to *delay*, think from hence, whether, though in that, as well as all other shapes, abuse runs through every vein in the system — think whether, of that delay which drew forth the *present* complaints, there was any other cause than the difference, in point of dispatch, between this one man and every other; and whether, while this one man is where he is, deliverance from evil in that shape, any more than in any other, be possible.

Henceforward, in Honourable House, or in Right Honourable House, — on the one side, or on the other, — should any man have the hardihood to stand up and declare, that on either side there is any more real regard for justice there than in the hulks — or in men's breasts any more sympathy for the sufferings of the people than in the cook's for the eels she is skinning — tell him of this!

2. Double-bodied monster, head judge and head party-man, back to back: fitter to be kept constantly in spirits in an anatomy school, than one hour in the cabinet and the next hour on the bench. Behold in this emblem one of the consequences of having one and the same man to sit as sole highest judge, with all the property of the kingdom at his disposal, and in the cabinet to act as chief organizer of intrigues, and moderator of squabbles about power, money, and patronage: the cabinet situation being the paramount one, — the most transcendent aptitude for the judicial situation cannot keep him in it — the most completely demonstrated inaptitude remove him out of it! This under Matchless Constitution, under which the most loudly trumpeted tune is — *the independence of the judges.*

Practical

placed, but if pretended, so falsely pretended, to be still kept in his hand.

This being premised, and admission made of the facility with which, for purposes such as have been brought to view, he can wrap his misery-breeding meaning up in clouds, such as, while transparent to accomplices and natural allies, shall be opaque to all destined victims, — I must, for shortness, refer my readers to Mr. Butler's panygeric. Sending them to a work which has already had ten times as many readers as any of mine can look to have, I secure myself against the consciousness of injustice, and, I hope, from the reproach of it.

I will advance further in my approach to meet him.

On any of those nice points on which, expectation being equally strong and sincere on both sides, the difference between right and wrong being scarce discernible, decisions, were it not for appearances, might, with as little prejudice to the sense of security, be committed to lot as to reflection holding the scales of justice, — on any of these sources of doubt and display, which, in any tolerable system of legislature-made law, a line or two, or a word or two, would have dried up — Lord Eldon, at the expense of years, where another man would have taken days, has given to the amateurs of difficulty a degree of satisfaction beyond what any other man could have given to them: to them, satisfaction; to himself, reputation — instrument of power applicable to all purposes. This, by the having stocked his memory with a larger mass than perhaps any other man (Romilly possibly excepted) of the cases known to have sprung up within the field of equity, — and the having also enabled himself, with correspondent facility, to make application of them to the purpose of each moment, whatsoever be that purpose, whether it be to lead aright, to mislead, or to puzzle and put to a stand, himself or others.

So much for intellectuals: now for morals. Beyond all controversy,—recognised not less readily by adversaries than by dependents, one politico-judicial virtue his Lordship has, which, in his noble and learned bosom has swelled to so vast a magnitude, that, like Aaron's serpent-rod, it shows as if it had swallowed up all the rest. In the public recognition of it, trembling complaint seeks an emollient for vengeance; decorous and just satire, a mask. After stabbing the *Master of the Abuses* through and through with facts, Mr. Vizard takes in hand the name of this virtue, — and, *innuendo*, this is the only one that can be found, lays it like a piece of gold-beater's skin on the wounds. That which beauty, according to Anacreon, is to woman, — *courtesy*, according to everybody, is to Lord Eldon: to armour of all sorts — offensive as well as defensive — a matchless and most advantageous substitute. With the exception of those, whom, while doubting, he is ruining, and, without knowing anything of the matter, plundering,— this it is that keeps everybody in good humour: everybody — from my lord duke, down to the barrister's servant-clerk. Useful here, useful there, useful everywhere, — of all places, it is in the cabinet that it does knight's service. It is the *court sticking-plaster*, which, even when it fails to heal, keeps covered all solutions of continuity: it is the *grand imperial cement*, which keeps political corruption from dissolving in its own filth. Never (said somebody once) never do I think of *Lord Eldon* or *Lord Sidmouth*, but I think of the aphorism of *Helvetius* — *Celui qui n'a ni honneur ni humeur est un courtezan parfait.*

When this virtue of the noble and learned lord's has received its homage, the rest may be most effectually and instructively made known by their fruits. These fruits will be his *res gestæ*: exploits — performed throughout, or in the course of, his four-and-twenty years' dominion over the fields of judicature and legislation. Enterprises consummated — enterprises in progress — measures not originating with him, but taken up by him and improved — exploits performed by his own hands, exploits performed by the hands of his creatures, or other instruments; — under one or more of these heads, were any such exactness worth the space and trouble, would some of these exploits be to be entered, — under another or others, others. But, forasmuch as all *judicial* censure is altogether out of the

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Such was the *alter idem* appointed by Lord Eldon to sit with *idem*, and report the non-existence of delay, together with the most effectual means of removing it.

Keeping Falstaff in his eye, — Inefficient myself, I am the cause (said Lord Eldon to himself) that inefficiency is in other men. In Dublin my foil, in London my Mitford, shall be at the head of my securities that nothing shall be done in the commission, which with my disciple Peel to laud and defend me — I will establish for that purpose.

Practical lesson: — Never, by any other means than the making the ruling few *uneasy*, can the oppressed many obtain a particle of relief. Never out of mind should be the parable of the *Unjust Judge*.

As to Lord Redesdale, digression upon digression as it is, candour and sympathy compel the mention — he, like Mr. Peel, has committed one act of rebellion against his creator: he, too, has made one departure from *consistency*. Mr. *Peel's* is the *special-jury act: Lord Redesdale's, the insolvency act.* Should the day of repentance ever come, — each, with his bill in his hand, may cry, like *Lovelace* under the avenging sword — Let this expiate! But Lord Eldon! where will be his atonement? One alone will he be able to find, and that he must borrow of *Lord Castlereagh*.

question, and the space and research necessary for such distinctions altogether unaffordable, they must unavoidably be omitted. Under each head, it will be for the reader, from what he has seen or heard, or may choose to see or hear, to consider whether, and, if yes, how far, the imputation attaches. To improve upon these hastily collected hints, and complete the investigation, would, if performed by a competent hand, assuredly be a most interesting, as well as useful work.

1. Nipping in the bud the spread of improvement over the habitable globe, ruining fortunes by wholesale, and involving in alarm and insecurity a vast proportion of the vast capital of the country, by wantonly-scattered doubts, leaving the settlement of them to a future contingent time that may never come.*

2. Rendering all literary property dependent upon his own inscrutable and uncontroulable will and pleasure.

3. Establishing a censorship over the press, under himself, with his absolute and inscrutable will, as censor: inviting, after publication with its expense has been completed, applications to himself for prohibition, with profit to himself in these, as in all other instances.

4. Leaving the line of distinction between cases for *open* and cases for *secret* judicature, for so long as there is any, at all times dependent on his own inscrutable and uncontrovertible will and pleasure, establishing and continually extending the practice of covering his own proceeding with the cloak of secresy.

5. Rivetting, on the neck of the people, the continually pinching yoke of an aristocratical magistracy, by rendering all relief at the hands of the chancellor as hopeless, as, by artificial law expenses, and participation in sinister interest and prejudice, it has been rendered at the hands of the judge.

6. On pretence of heterodoxy, by *ex post facto* law, made by a single judge for the purpose, — divesting parents of the guardianship of their own children.

7. Injecting into men's minds the poison of insincerity and hypocrisy, by attaching to pretended misdeeds, sufferings, from which, by an unpunishable and unprovable, though solemn act of insincerity, the supposed misdoer may, in every case, with certainty exempt himself.†

* Of this broadcast dissemination of uncertainty, one obvious cause may naturally be found in the profit made in the two great shops — the *private act of parliament shop* and the *charter shop*, in which the right of associating for mutually beneficial purposes is sold at so enormous a price, — for the benefit of men, by whom nothing but obstruction, in this and other shapes, is contributed.

Wheresoever, in the case of a public functionary, remuneration wears the shape of fees, there, abuse in every shape is sure to have place. Not only in judicial offices so called, but in all offices whatsoever, such cases excepted, if any, in which, for special adequate cause, special exception can be shown, salary should be substituted for fees.

In the case of patents for invention, exaction in this shape has swelled to an enormous magnitude. Justice, in the shape of reward for inventive genius, denied to the relatively poor, that is to say, to probably the far greater number — sold at an enormous price to the relatively rich: all inventions, — the authors of which are not themselves rich enough to carry them through, nor able to find a capitalist to join with them, — nipt in the bud. Official men, lawyers and non-lawyers in swarms, who contribute nothing but obstruction, murdering invention thus in the cradle, ravish from genius its reward, and in case of failure, aggravate the pressure of ill success. To see the use of *Matchless Constitution*, on this occasion, compare the price, paid by inventive genius for this security in the United States and in France. Note, that on these occasions, that plunderage may be tripled, the three kingdoms are disunited.

In all, or most of these cases, Lord Eldon, after having had a little finger in the pie when Attorney-general, has a finger and thumb in it now that he is Chancellor: adding to the pleasure of licking in the sweets, the gratification of obstructing improvement — called for this purpose *innovation*.

A set of motions, calling for returns of these several sources, and of the masses of emolument derived from each by the several functionaries, could scarcely be negatived.

† Questions allowed to be put to a proposed witness: — "Do you believe in the existence of a God?" If he, who does not believe, answers that he does, — thus answering falsely, he is received: if his answer be, that he does not believe, — speaking thus truly, he is rejected of course.

It is by exploits such as this, that rise has been given to this appalling question: "Which, in the capacity of a proposed witness, is most trustworthy — the Christian, priest or layman, who, for a series of years, has never passed a day without the commission of perjury, — or the Atheist, who — when at the instance of Lord Eldon, or any one of his creatures in the situation of judge, interrogated as to what he believes — submits to public ignominy, rather than defile himself with that abomination in so much as a single instance?" Christians! such of you as dare, think of this and tremble!

Question, as to this virtual statute, the source and seat of which is in the breast of Lord Eldon: — If this is not a subornation of perjury, what is or can be? Lord Eldon — is his mind's eye really so weak, as, throughout the whole field of legislation, to be kept by words from seeing things as they are?[a] Decide who can, and give to head or heart — sometimes to the one perhaps, sometimes to the other — the credit of this blindness.

[a] As to the constant and all-pervading habit of perjury, see "*Swear not at all.*" For cleansing judicature of this abomination, a not unpromising course is in the power of individuals. Any suitor, who sees a witness of whose testimony he is apprehensive — if the witness belongs to any of the classes in question, let his counsel have in hand a copy of the statutes in question, asking him whether he did not swear observance to every one of

8. In all manner of shapes, planting or fixing humiliation and anxiety in the breasts of all who, on points confessedly too obscure for knowledge, oppose him, or refuse to join with him, in the profession of opinions, in relation to which there is no better evidence of their being really his, than the money and power he has obtained by the profession of them.

9. Pretending to establish useful truth by the only means by which success to pernicious falsehood can ever be secured. Proclaiming, in the most impressive manner, the falsehood and mischievousness of everything that is called *religion*,— by punishing, or threatening to punish, whatsoever is said in the way of controverting the truth or usefulness of it.

10. Bearding parliament, by openly declaring its incapacity to render unpunishable anything to which the judges, with the words *common law* in their mouths, shall have been pleased to attach punishment, or take upon them to punish: — thus, by the assumed authority of himself, and those his creatures, keeping men under the rod of punishment, for habits of action, which, in consideration of their innoxiousness, had by parliament been recently exempted from it: as if parliament had not exempted men from *declared* and *limited*, but for the purpose of subjecting them to *unconjecturable* and *unlimited* punishment. Witness the Unitarians, and all others, who will not, at his command thus signified, defile themselves with insincerity, to purchase the common rights of subjects.

11. Doing that which even parliament would not dare to do: and because parliament would not dare to do it, doing it with no other warrant than this or that one of a multitude of words and phrases, to which *one* import as well as *another* may be assigned at pleasure: witness *libel, blasphemy, malice, contra bonos mores, conspiracy, Christianity is part and parcel of the law of the land:* converting thus at pleasure into crimes, any the most perfectly innoxious acts, and even meritorious ones: substituting thus, to legislative definition and prohibition, an act of *ex post facto* punishment, which the most consummate legal knowledge would not have enabled a man to avoid, and as to which, in many an instance perhaps, it was not intended that it should be avoided.*

All this — which, under a really-existing constitution, grounded on the greatest-happiness principle, would furnish matter for impeachment upon impeachment — furnishes, under the imaginary "matchless" one, matter of triumph, claim to reward, and reward accordingly.

12. Poisoning the fountain of history, by punishing what is said of a departed public character on the disapproving side — while, for evidence and argument on the approving side, an inexhaustible fund of reward is left open to every eye: thus, by *suppression*, doubling the effect of *subornation, of evidence*. This by the hand of one of his creatures: his own hand, without the aid of that other, not reaching quite far enough.

The title *Master of the Abuses*, which occurs in p. 372, may perhaps have been thought

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* But Parliament — contempts of its authority all the while thus continually repeated — what does it say to them? Say to them? why nothing at all, to be sure: Cabinet, by which the wires of Parliament are moved, desires no better sport. Chancellor — by whom the wires of Cabinet are moved, and by whom the acts of contempt are committed or procured — looks on and laughs in his sleeve.

Contempt of Parliament indeed! Parliament desires no better than to be thus contemned: and to be assured of this, observe whether, of the indications given in these pages, it will suffer any, and what, use to be made. Contempt of Parliament! Why, all this is the work of Parliament itself. That which, with its own forms, it could not do without a world of trouble—what it might even be afraid to do — (for where guilt abounds, so does cowardice)—it does by simple connivance, without a particle of trouble. But why talk of *fear*? On each occasion, whatever is to be done, the object with all concerned is, to have it done with least *trouble* to themselves. By the hand of a judge, those by whom parliament is governed do, without any trouble, that which without trouble in abundance could not be done by the hand of parliament.

In flash language, *common law* — in honest English, *judge-made law*—is an instrument, that is to say, judges are instruments — for doing the dirty work of parliament: for doing in an oblique and clandestine way, that which parliament would at least be ashamed to do in its own open way.

Nor, for the allotment of these parts, is any such labour as that of concert or direction necessary. Nothing does the purpose require that an English judge should do, more than what in his situation human nature and habit effectually insure his doing: giving, on every occasion, to his own arbitrary power every possible extent, by all imaginable means. While this is going on, so long as what he does suits the purposes of his superiors, it is regarded, of course, with that approbation of which their silence is such perfectly conclusive evidence. On the other hand (to suppose, for argument's sake, an effect without a cause) should he ever in any the smallest degree obstruct their purposes, any the least hint would suffice to stop him. What could any judge do— what could even Lord Eldon hope to do—against the will of monarchy and aristocracy in parliament?

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of these statutes, and whether, in the breach of this or that article, he did not constantly live: on denial, he will be indictable for perjury: on admission, it will be a question whether he can be heard.

Lord Eldon! did you never take that oath? Lord Eldon! did you never violate it? Think of this, Lord Eldon! — *Mr. Peel!* did you never take that oath? Mr. Peel! did you never violate it? Think of this, Mr. Peel!

to require explanation. It was suggested by that of *Master of the Revels*, coupled with the idea of the enjoyments in which he and his have for so many years been seen *revelling* by the exercise given to the functions of it.

The *Mastership of the Revels* being abolished, or in disuse — the *Mastership of the Abuses* appears to have been silently substituted: and Lord Eldon presents himself as having been performing the functions of the office, as yet without a salary: with his Masters in Chancery, serving under him in the corresponding capacity, and on the same generous footing, on the principle of the *unpaid magistracy*. A subject for calculation might be — at what *anno domini* the business of all the *denominated* offices, possessed by those Masters and their Grand Master respectively, will have been brought into the state, into which, under his lordship's management, that of the *Six-clerks* has already been brought, together with that of the *six offices*, with which the *future* services of his honourable son have been so nobly and generously remunerated? — at what halcyon period these offices will, with the rest, have been sublimated into sinecures, and the incumbents apotheosed into so many *Dii majorum* or *Dii minorum gentium* of the Epicurean heaven?

To help conception, a short parallel between the noble and learned Lord, and his noble and learned predecessor Jefferies, may be not altogether without its use. *General Jefferies* had his *one* "*campaign*:" *General Eldon* as many as his command lasted years. — The deaths of Jefferies's *killed-off* were speedy: of Eldon's, lingering as his own resolves. The deaths of Lord Jefferies's victims were public — the sufferers supported and comforted in their affliction by the sympathy of surrounding thousands: Lord Eldon's expired, unseen, in the gloom of that solitude, which wealth on its departure leaves behind it. Jefferies, whatsoever he may have gained in the shape of royal favour — source of future contingent wealth — does not present himself to us clothed in the spoils of any of his slain. No man, no woman, no child, did Eldon ever kill, whose death had not, in the course of it, in some way or other, put money into his pocket. In the language, visage, and deportment of Jefferies, the suffering of his victims produced a savage exultation: in Eldon's, never any interruption did they produce to the most amiable good-humour, throwing its grace over the most accomplished indifference. Jefferies was a tiger: Eldon, in the midst of all his tears, like Niobe, a stone.

Prophet at once and painter, another predecessor of Lord Eldon — Lord Bacon — has drawn his emblem. "Behold the man," says he, "who, to roast an egg for himself, is ready to set another's house on fire!" So far so good: but, to complete the likeness, he should have added—*after having first gutted it*. One other emblem — one other prophecy: — is it not written in the Arabian Nights' Entertainments? — Sinbad the Sailor, *Britannia*: Old Man of the Sea, the Learned Slaughterer of Pheasants, whose prompt deaths are objects of envy to his suitors. After fretting and pummelling, with no better effect than sharpening the gripe — the Arabian slave, by one desperate effort, shook off his tormenting master. The entire prophecy will have been accomplished, and the prayers of Britannia heard, should so happy an issue, out of the severest of all her afflictions, be, in her instance, brought to pass.

POSTSCRIPT.

§ 1. *Under Lord Eldon, Equity an Instrument of Fraud and Extortion. — Samples continued.*

WHILE writing what is above, came to hand a "Review of Chancery Delays," &c.: signature, "The Authors." When what they say is seen, the reason for such their concealment will be sufficiently manifest. Read this work of theirs, whoever you are,—you who, thinking for the public, have any regard for justice: so rich the mass of abuse, it not merely denounces in general terms, but spreads out in detail, bringing it at the same time within the conception of non-lawyers: the matter ranged under some nine or ten heads, following one another in the chronological order of the proceedings in a suit.

"Proper subject of every honest man's indignation," according to them (p. 42,) not only "the system which allows," but "the judges who *encourage* such conduct:" and, with a little attention, every solicitor who has had twenty-five years' practice, and a few over, in the equity courts, as well as many a man who has had none, will be able to draw the line, and to say to himself, whether, by any former judge, anything like so much *encouragement* has been given to the sort of conduct therein held up to view. Ask, with so many learned gentlemen, whether it be to Lord Eldon, or to the system, that the phenomena are due? Ask first, whether it is to the father or to the mother that the birth of a child is due?

From this most instructive publication, take a few hastily-picked-up samples. Pages 48, 49: — 1. Master's attendance (as everybody knows) never more than one hour in one day in the same cause.

2. Between attendance and attendance, distance commonly three or four days — frequently a week.

3. For every such actual attendance, pay-

ment for that and two others exacted by the Master, he declaring in writing that on both days he has attended; whereas on neither day has he, or anybody for him, attended.

4. For each such falsely alleged, and unjustly charged attendance, fees exacted by the Master, not only for himself, but for every solicitor employed in the suit, a separate one; there being in every equity suit parties in any number, having, as many as please, each of them a separate solicitor.

5. Hours of such attendance in a day seldom more than five (other accounts generally make it less.) Per Mr. Vizard — (see above, § 2, p. 350,) with "*some exceptions*" only, not more than three.

6. Months in which such attendances are to be had, out of the twelve, not more than seven.

Page 52. Recapitulation of the means of delay employable in ordinary, over and above the additions employable in extraordinary cases: to wit, employable by dishonestly-disposed men on the two sides of the suit respectively, thus enabled and invited by Lord Eldon, with or without predecessors for stalking-horses, to carry that same disposition into effect.

I. By dishonesty on the *defendant's* side; to which side, in a common law-suit, dishonesty is of course most apt to have place: —

	Years
1. Before the time for what is called *appearance*, (the defendant not being *permitted to appear*, but forced to employ in appearing for him a solicitor, whom, likewise, without a train of barristers to speak for him, the Chancellor will not see,) - - - - -	1½
2. By not appearing before the cause is ultimately called on for judge's *hearing*, - - - -	2
3. After *hearing*, "wasted by reference to a Master, years from 4 to 6:" oftener a much longer period,	4 to 6
4. Between Master's report made, and judge's second hearing, -	2 to 3
Total, -	9 to 12½

II. By dishonesty on the *plaintiff's* side; that is to say, on the part of him who, at common law, had been on the defendant's side; one half of the business of equity consisting in stopping or frustrating the application of the remedy held out by common law; and at any stage, down to the very last, this stoppage may be effected.

N. B. This combination of two sorts of judicatories, proceeding on mutually contradictory principles, is by Lord Eldon, and by so many others, professed to be regarded as necessary to justice.

	Years
1. By amending bills, from -	4 to 6
2. Between the suit's being *set down* for hearing by the judge, and its being by that same judge *called on* for hearing, - - - -	2
3. After-hearing, wasteable in reference to a Master, as in the defendant's case, as above, from -	4 to 6
4. Between Master's report and judge's second hearing, as above	2 to 3
Total, -	12 to 17

Note that (as has been often stated, and never denied,) delay on the plaintiff's side, as here, has been in use to be employed as a regular and sure source of profit by dishonest men with other men's money in their pockets, where the quantity of it in the shape of capital has been deemed sufficient, by means of the interest or profit on it, to pay for the delay sold by the judges of the common law and equity courts together: they, with their creatures and other dependents in office, and their friends and connexions in all branches of the profession, sharing, by means of the fees, with these dishonest men, in the profit of their dishonesty.

Comes in, at the same time, "Letter to Mr. Secretary Peel on Chancery Delays, by a Member of Gray's Inn." Pages, 25.

I. Page 20. Subject-matter of the most common and seldomest-contested species of suit — account of a testator's estate: —

1. Number of useless copies taken of said account, ten.

N. B. Cost of each, ten-pence for every ninety words.

2. Pages 15, 16, 17. Under Lord Eldon, irrelevance, technically styled "*impertinence*," thence useless lengths of pleadings perpetually increasing — "laxity of pleadings, quantity of impertinent matter — a subject-matter of general complaint and general observation *by Lord Eldon*." Punishment being all this while unexampled; encouragement in the shape of reproof in the air, or threats, of which it is known they will never be executed, are at the same time frequent. Before Lord Eldon, the practice was, to saddle the counsel with costs. Per the authors, as above (p. 350,) by "*late decisions* this abuse has received positive encouragement and increase."

Pages of all five pamphlets, taken together (Mr. Vizard's included,) 157. Compressed into perhaps a third of the number, the substance would compose a most instructive work. By detaching from the abuses the proposed remedies, the compression might perhaps be aided: the remedies, in a narrow side column, or at bottom, in form of notes.

But neither should the defences, whatever they are, pass unexamined: for of the charges,

with such premiums for defence, whatsoever is passed over unnoticed or slurred over, may, with unexceptionable propriety, be regarded as admitted.

§ 2. *Lord Eldon Squeaking.*

Drama (not to say *farce*,) "*The Courts of Law Bill.*" Time, June 28, 1825. Editor, *Globe and Traveller*. Scene, Right Honourable House. Enter Lord Liverpool, Prime Minister, bill in hand. Lord Eldon, Chancellor, in the back ground. Motion by Lord Liverpool for proceeding in the bill. Enter Lord Grosvenor with a digression — a dissertation on sinecures: Lord Liverpool, in answer: — determined to save fees from commutation during the incumbency of the present incumbents; determined to save the head fee-eater from all hardships imposed on inferior ones: determined to give the puisne judges the proposed £5500 a-year, because there were others, who, for doing less, were paid more. Mr. Robinson having previously (to wit, in Honourable House) demonstrated the necessity of the increase, appropriate aptitude being, in his mathematics, as *dignity*, and *dignity as opulence*: the proof being composed of repetitions, ten in number (for they have been counted,) of the word *dignity*.

Whereupon, up rises Lord Eldon, finger in eye, answering Lord Grosvenor's digression, with a digression on calumny and firmness. Addresses, two: one to the people, the other to noble lords. For better intelligibility, behold these same addresses, in the first place, in plain English: after that, for security against misrepresentation, in Lord Eldonish.

1. *Lord Eldon to the people, in plain English.*—Have done! have done! Let me alone! Nay, but don't teaze me so. You had best not; you won't get anything by it. This is not the way to get me out, I can tell you that. Come now, if you will but let me alone, I'll go out of my own accord. I should have been out long ago, had it not been for you. It's only your teasing me so that keeps me in. If you keep on tease, tease, I'll never go out: no, *that* I won't.

Note that this was on the 28th of June 1825: ten days after the day on which, without authority or expectation on the part of the author, the editor of the Morning Chronicle, with whose stripes the noble and learned back is so well acquainted, had given an article on these *indications*.

*The original in Lord Eldonish.**—"Perhaps it is thought that this mode of calumnious misrepresentation is the way to get me out of office. They are mistaken who think so: I will not yield to such aspersions; nor shrink from asserting what I owe to myself. Had I been treated with common justice, I should not, perhaps, have been Lord Chancellor this day; but, I repeat it, I will not be driven out of office by calumnious attack. Let me only be treated with common justice, and my place shall be *at any man's disposal.*"

Calumnious indeed! Look back, cautious and justice-loving reader — look back at the *indications*: see what any of them want of being *proofs*: see whether anything but a formulary or two is wanting to render them proofs, and conclusive ones. Suppose, for argument's sake, the defendant guilty, and see whether, on that supposition, anything more convincing than what is there brought to view, could have been adduced. Say whether, in case of mis-statement anywhere, there can be any ground for regarding it as wilful: any ground for attaching to it any such epithet as *calumnious*.

2. *Lord Eldon to Lordships in plain English.*—Help! help! help! Going, going! Can't stand it any longer. What! nobody lend me a hand?—nobody speak a word for me? Do not you see how it is with me? What! and will *you* turn against me? Better not: I can tell you *that*. You'll be all the worse for it. When I am put down, it will be your turn next. What will become of your privileges? — think of that! I'll tell you what, so sure as they take away my seals, so sure will they take away your privileges.

Squeaking, staggering, blustering, crying out for help — all in a breath! What an exhibition!

Original in Lord Eldonish.—"The feelings and fate of an individual are in themselves of small importance to the public, and I may be sacrificed to the insults I daily receive. But I beg noble lords to reflect, that I may not be the only sacrifice. If the object is, as it appears to be, to pull down the reputations, and throw discredit on the motives and conduct of men in high official situations, — if every man who occupies a high situation in the church" [turning of course to the bishops' bench] "in the church or state, is to become the object of slander and calumny, then your lordships may lay your account with similar treatment, and be convinced that your privileges or power cannot long be respected, when such characters have been sacrificed."

N. B. At what words the tears began to flow is not reported. When a crocodile comes on the stage — *Tears, tears*, should be added to the *Hear! hears!*

No, my weeping and fainting and firmness-acting lord. How purblind soever the eyes you are accustomed to see around you, blindness is not yet so near to entire, as to make lordships see no difference between your seals and their privileges. Their privileges! Who is it that is to take away these same privileges? The king? or the people? or the pope

* For greater fidelity, and to avoid some circumlocutions, the third person is here all along retransmuted into the first.

of Rome? Your seals! Yes, the king can take away these pretty playthings of yours, and not improbably will, so soon as in his estimation there will be more uneasiness from keeping them where they are, than from placing them elsewhere. But Lords' *privileges!* they are a sort of a thing not quite so easily disposed of. To bring his hand in, his Majesty will first take away from himself his own *prerogatives*.

The people? Yes: supposing guards and garrisons were all annihilated in a day, the people, that is to say, a mob, might not find much more difficulty in dealing with these accoutrements of yours than the king would: after burning your bags, they might throw your seals into the Thames, where your predecessor, *Littleton*, threw his. Yes: all this a *mob* (for this is what you always have in view when you speak or think of the people) might indeed do. But could they either burn or throw into the Thames their Lordships' privileges?

As to the Pope, I say nothing of him here: what regards him, belongs to Catholic Emancipation.

Seriously, it was found impossible, by anything but extravagance, to comment upon such extravagance. What must have been the state of that mind which could rely upon it as argument?

In this place, without aid either from witchcraft or from treachery, I had actually gone on and given the substance of the argument, with which, in cabinets and over bottles, the noble and learned lord has for these five-and-twenty years, and more, been occupying himself in the endeavour — no very difficult one, it must be confessed — to keep up, and if possible to increase, the aversion to improvement in so many shapes, and to reform in every shape. But relevancy seeming questionable, and mischief from overweight unquestionable, the papers have been put aside.

The *Indications* are before the reader: some original, others copied. In both cases, how determinate they are, he can scarcely have failed to remark. As well as the proofs, he shall now have before him the answers. From a clear conscience, accompanied by a clear and well-exercised conception, *they* would have been correspondently determinate. In generals, at any rate, and in particulars, according as time and occasion admitted, and importance required, every charge would have been noticed; and, lest omission should be taken for confession, no one left altogether without notice.

So much as to what the answers might have been, and, in the momentarily supposed case, would have been. Behold now what, in the actual case, they are.

First, as to the general heads of defence. They will be found composed of uncharacteristically-vituperative matter, applied at every turn to the accusations, and expressed in these terms: —

1. "Misrepresentation and calumnies."
2. "Calumnious misrepresentation."
3. "Such aspersions."
4. "Calumnious attacks."
5. "Mis-statements and misrepresentations of every kind."
6. "Much misrepresentation."
7. "Calumny and mis-statement."
8. "Slander and calumny."

What the noble and learned defendant's perturbation did not permit him to perceive is, how strongly this sort of language smells of "*the Old Bailey:*" of the place he was looking to be "sent to by their Lordships," (as per *Globe*, June 21, 1825,) there to be "*put to death:*" and that when a man can find nothing to say that shall tend to his exculpation, this sort of unmeaning outcry is what he vents his anguish in, rather than be seen to make confession in the shape of silence.

So much for generals. Follow now all the several specific attempts at defence, with an observation or two upon each.

Lord Eldon. — I. "From the accounts which have been furnished to me of my emoluments as Lord Chancellor from those who best know the amount," [Lordship himself being nobly careless of all such things] "apart from my income as Speaker of the House of Lords, I am happy to say, that the Lord Chief-Justice of the King's Bench has received a larger sum from his office: I speak from the average accounts of the last three years."

Observations. — 1. What is this to the purpose? Not of the *quantum* do we complain, but of the *sources:* of which sources he dares not say a syllable.

2. Whatever it be that you receive, is it the less because you receive it from a number of *places* instead of one?

3. Of the patronage, nothing said: whereas, from a small portion of it, you receive, in the person of your son, according to the undisputed calculation of Mr. Miller,* £3,500 a-year, and, unless in case of untimely death, will receive in the whole, £9000.

4. What is it to the purpose what the Chief-Justice has? If the emolument of the man in question is excessive, does the greater excess of another man's make it less so?

5. Since he knows, then, what his emoluments are, why will he sit to be thus badgered, rather than produce them? Why, unless it be because they would be seen not to agree with the account thus given of them? and because he fears that, if honourable gentle-

* "Inquiry into the Present State of the Civil Law of England," pp. 79, 80.

men knew the whole amount, they would grudge giving him full value for it?

LORD ELDON. — II. "And I will further say, that, in no one year since I have been made Chancellor, have I received the *same* amount of profit as I enjoyed while at the bar."

Observations. — 1. The *same*? No, most probably not; for, so long as there is a farthing's-worth of difference, this is strictly true. But how is anybody to know whether it is?

2. If everybody knows it, what would it be to the purpose?

3. While the Chancellor declares himself *happy* that the Chief-Justice's profits out of other men's misery are so great, may a suitor be permitted to confess himself not quite so *happy*, that Barrister's profits, drawn by insincerity out of the same impure source, are, if so it really be, so enormous?

LORD ELDON. — III. "Had I remained at the bar, and kept the situation I held there, I solemnly declare I should not have been a shilling the poorer man than I am this moment, notwithstanding my office."

Observations. — 1. Believe who can: evidence, none. Disprobative counter-evidence, as to the official side of the account, obstinacy of concealment: evidence, circumstantial indeed, but not the less conclusive.

But, possibly, here as before, of his cluster of offices, with their emoluments, he shuts his eyes against all but one: and thus, by a virtual falsehood, thinks to keep clear of a literal one.

2. Again — what is all this to the purpose?

Oh! had he but kept to the bar — or, instead of the bench, been sent to that bar to which, as above, he so lately looked to be sent by their lordships on his way to another place — what a waste of human misery would have been saved! of human misery, for which who ever saw or heard him exhibiting any the slightest mark of regard? Men, women, and children — widows and orphans — being treated by him as if composed of insentient matter, like the stones from which the gold exacted from them was extracted.

LORD ELDON. — IV. "No charge of delay can fairly be brought against me."

Observations. — 1. Now well done, Lord Eldon! To a host of witnesses, continue to oppose a front of brass!

2. Not to speak of the mountains of manufactured delay opened to view by the samples, as if by a particular providence, — in opposition to this plea of *not guilty*, behold, prepared by anticipation, six months antecedently to the pleading of it, a special piece of criminative evidence: a statement, the manifestly trustworthy result of a course of observation, the commencement and continuance of which was a phenomenon not much less extraordinary than the course observed upon. It is here copied, word for word, from a morning paper.* Whence it came from, is unknown: neither to the whole, nor to any part of it whatsoever, has any contradiction been ever heard of.

3. Under the eyes of so vast a posse of retainers, retained by every tie of interest in the defence of this giver of good gifts, — is it in the nature of the case that anything to which the name of misrepresentation could have been applied with any chance of being regarded as properly applied, should in all this time have passed unnoticed?

"COURT OF CHANCERY. — *(From a Suitor.)* — Term ended on Monday: the Lord Chancellor, when he was rising, apprized the gentlemen of the bar and the suitors of the court, that he would not come down till Thursday. His lordship is no doubt entitled to two day's recreation after his learned labours of a month. In order that the public may duly appreciate those labours, let us briefly review them: — the calculation may appear curious — the time which his lordship sat — the number of cases *heard* — not *decided* — and the *quantum* of relief afforded.

"His lordship commenced his sittings on the 1st November, and from that to the 29th, both inclusive, he sat in court 24 days. In no day but *one*, did he sit before *ten* o'clock; on *one* day only did he remain till *three:* indeed he could not during term, for, as he has often said, '*the students should have their dinner.*'

"His lordship, out of the 24 days, spent in court 79½ hours!!

For 4 days he sat	4½ hours each,	equal to 18
For 6 ditto .	4	24
For 8 ditto .	3¼	26
For 4 ditto .	2¼	9
For 2 ditto .	1¼	2½
24 days.		Hours, 79½

"This statement is correct, if the court *clerk* can be depended on. On two of those short sitting days, his lordship had to attend in council to hear the Recorder's report of the Old Bailey convicts; on another of them, he rose before twelve o'clock, in indignation that there was *no business:* — No business in Chancery! On some of the other short days, he was called on *business elsewhere.* But let us now see how this time was occupied.

"The case of the *Rev. A. Fletcher* is entitled to the first place in this enumeration. Indeed the flight of Paris *with* Helen was not destined to give more employment for the Grecian heroes, than the flight of Mr. Flet-

* *Morning Herald* Thursday, 2d Dec. 1824.

cher *from* his Caledonian lassie is to cut out for the gentlemen of the long robe: thus may we fairly exclaim, — *Cedant arma togæ!* In the King's Bench we had only a skirmish, from which the parties retired *æquo Marte*. The great fight was reserved for the arena of Chancery: for four days the contending parties fought, and four times did night, or preparations for the students' dinner, put an end to the contest. On the fifth day, — after hearing from eight counsel nine speeches, the reply included, — his lordship decided that he would not become an officer of police for a Scotch synod, to pull the reverend preacher from the pulpit.*

"This case consumed 17 hours out of 79½. But is it decided? No — the contrary, for his lordship more than once intimated 'that, *if* it were worth while by a longer term of suspension to bring the question before the court in a *more regular form*, his opinion *might* incline the *other* way.' His intimations will not be lost on the synod; therefore, Mr. Fletcher, that you may not be pulled down by the skirts, you had better, like *Mawworm*, wear a spencer.

"Fourteen hours more were consumed, from day to day, in two cases which were new to the court. These were — petitions, from *Latham* and *Abbots*, bankrupts, praying that his lordship, by virtue of the enlarged jurisdiction conferred on him by the new bankrupt law, would grant them their certificate, which the required number of their creditors refused. His lordship, after many observations, referred one to be re-examined by the commissioners; and, to determine the fate of the other, he demanded more papers. The cases of these parties are therefore *in statu quo*, and we are again fated to listen to half-a-dozen long-winded orations.

"Next after these in point of duration, is to be placed the motion to commit the *Glamorganshire canal proprietors*, for violating his lordship's injunction. After hearing eight counsel for ten hours on different days, his lordship decided that four of the defendants were not to be committed; but the liberty of fifth is *adhuc sub judice*. To balance the mildness of the judgment with a sort of trimming policy, vengeance was denounced against the refractory *watchmen*; therefore *they* had better look sharp. *Discite justitiam moniti, et non temnere.*

"We have now accounted for 41 hours out of the 79½. Of the rest, the old cases of *Grey v. Grey*, and of *Garrick v. Lord Camden*, in which no progress was made, took up 5 hours; 5 more were devoted to *Hale v. Hale*, to determine the sale of mother's estates, to be commenced *de novo*; and 10 from day to day were given to the *Attorney-General v. Heales*; *Sims v. Ridge*; the matter of *Bayles*, and the matter of *Blackburns*; to *Honey v. Honey*, *Wilcox v. Rhodes* — appeals from the Vice-chancellor, in the latter of which *his honour's decree* was pronounced to be '*nonsense incapable of being executed.*' Not one of them is a jot advanced.

"*Lunatics* and the *elopement of a ward*, took up 2½ hours. The *New Alliance company* took up 3: and then 9 more were wasted in disputes between counsel and court about priority of motions.

"The opening of the eternal *Opera House* cases (of which there are now three) took up 3 hours, and the remaining 7 were consumed from time to time on bankrupts' petitions, and miscellaneous orders.

"To recapitulate the whole, the business and time are balanced thus: —

The Attorney-General *v.* the Rev. A. Fletcher, ...	17
Ex parte Latham *in re* Latham and Parry, bankrupts, and ditto Abbots *in re* Abbots and Abbots, ditto,	14
Blackmore *v.* the Glamorganshire Canal company, ...	10
Grey *v.* Grey; Garrick *v.* Lord Camden, and Hale *v.* Hale, . . .	10
The Attorney-General *v.* Heales; Sims *v.* Ridge; *in re* Baylis, and *in re* Blackburns, with Honey *v.* Honey and Wilcox *v.* Rhodes, . .	10
Lunatics, Elopement of Ward, Alliance Company, and disputes about priority of motions, ...	8½
The Opera House cases, ...	3
Miscellaneous, ...	7
	79½"

LORD ELDON.—V. "It is a mistake to suppose, that because the drudgery of some offices is performed by deputies, they are therefore to be called sinecures."

Observations.—1. Nebulous-gas — confusion-gas — evasion-gas, from the Eldon laboratory. Eldon junior's six sinecures — four in possession; two more in reversion; — of course here in view. Never, where common honesty is an object of regard — unpunishable swindling, of indignation, — never will they be anywhere out of view.

2. Mark here the division. Business of official situation, *drudgery* and non-drudgery. Drudgery, doing the business of the office: non-drudgery, receiving and spending the emoluments of it; paying for the doing of the business (unless it be of a particular connexion) no more than a pittance, the smallest that any one can be found to take.

Note that, with few, if any exceptions, when from any one of these offices you have separated the drudgery, you have separated all

* Sarcasm and false wit, instead of calm judgment!

the business from it. For, laying out of the case those which are *judicial*, such as the *mastership* and the commissionerships and the examinerships—the business of them amounts to little or nothing more than ordinary clerk-business, such as copying or making entries under heads: business not requiring a tenth part so much appropriate knowledge and judgment and active talent, as that of an exciseman does.

3. Note, that what his lordship here does, consists in putting a *possible* case, that those who are eager to lay hold of every supposition favourable to him and his system, may, without proof, set it down in their minds an *actual* case: an actual case, to a considerable extent exemplified; and in particular, in the instance of the rich cluster of sinecures, out of the profits of which, without troubling himself with the drudgery either of writing or thinking, his honourable son is acting the part of a fine gentleman; and, if rumour does not overflatter him, testifying filial gratitude by good dinners.

4. The *possible* case is this: — a situation in which one man and no more is placed, though the business of it is more than one man can adequately perform: the business being at the same time of such a nature, as to be capable of being divided into two branches: one, requiring extraordinary appropriate acquirements, the other requiring none beyond ordinary ones; for example, shopkeepers' clerks' acquirements. In this state of things, the extraordinary-talent-requiring part of the business is reserved by the principal official person for himself (his appropriate aptitude, considering the dignity of him of whose choice he is the object, being unquestionable:) the no-more-than-ordinary-talent-requiring part, (that, to wit, which is meant by the *drudgery*) being turned over, or rather turned down, by him to the deputy. Of the thus wisely and carefully made division and distribution, sole object, of course — the good of the service.

5. Now then — supposing an inquiry into this matter included in the inquiries of a House of Commons' committee, is there so much as a single instance in which any such over-weight of business, together with any such division made, would be found exemplified? Whoever is a layer of wagers, might, without much danger, venture a considerable one to the contrary.

6. In the case of *Eldon junior*, what I would venture to lay for is — that, of his four places in possession, there is not one, the business of which requires so much appropriate knowledge, judgment, and active talent, as that of an exciseman does; and that there is not one for which he himself does any business other than signing his name, with or without the trouble of looking over the accounts of the deputies (if in name or effect there be any) to wit, for the purpose of ascertaining whether the principal receives the whole of what is his due. And so in regard to the *reversions*: the existence of which, by-the-bye, is a separate one, and that an abominable and altogether indefensible abuse.

7. True, my Lord. An office, in which for the public service, a something, an *anytaing*, is done — is not in strictness of speech a sinecure: though that something were no more than any charity-school boy is equal to; and although it took up but a minute in doing, once out of each of the seven months in a-year, during which your masters (your lordship's son-in-law included) serve.

8. This being conceded to you, what are you the better for it?

Would you have the amount of the depredation exercised by the maintenance of an office allowed to be executed by deputy? I will give you a rule by which, in every case, you may obtain it. From the sum received by the principal, subtract that received by the deputy or deputies, — the difference is, all of it, depredation: of thus much you may be sure. Whether of this which the deputy or deputies receive, there be any and what part that belongs to that same account, is more than you can be sure of, otherwise than by applying to this case, that matchless criterion of due proportion as between reward and service, fair competition — competition, as in the case of goods sold, and, — under the name of *work done*, — service, in all shapes, sold to individuals: and, if good in those cases, what should render it otherwise in this?

9. Casting back an eye on the matter thus employed in effecting the explosion of the Eldon gas, I cannot but regret the quantity. If, by any instruction contained in it, the labour of looking into it be paid for, it will be by the applications capable of being made of this concluding rule.

LORD ELDON. — VI. "I will pledge myself to be as active as any noble lord in correcting abuses, but I will perform my duty with a due regard to the rights of others."

Observations. — 1. Pledge himself? Yes: but giving a pledge is one thing — redeeming it, another. In the whole five-and-twenty years, during which this has been swagging, like an incubus, on the breast of justice, in what instance has he ever meddled with abuse in any shape, unless it be by the endeavour to give perpetuity and increase to it?

Not that, as thus worded, this desire amounts to any great matter beyond what he might have credit given him for, and this without any very wide departure from the exact line of truth. Noble Lords, — if in a situation such as theirs it were possible for men to feel any such desire, — would not have far to look for the gratification of it.

Your Majesty (said somebody once to a King of Spain who was complaining of ceremonies) is but a ceremony. Your Lordships (the same person might have said to their Lordships) are but an abuse.

As an *argumentum ad hominem*, nothing against this challenge can be said. But, the organs, for which it was designed, were the ears of noble lords, not the eyes of the public: to which, however, I hereby take the liberty of recommending it. *Abuses* are neither *hares* nor *foxes*. Noble lords are too well born, and under noble and learned lords too well bred, to take any great delight in *hunting* them.

LORD ELDON. — VII. "The reason why in the present bill there appeared no clause regulating offices in the court of Chancery is — that a commission is now sitting on the state of the court."

Observations. — 1. Now sitting? O yes, and for ever will be, if his lordship's recommendation to the people is taken by the people, and the operation of *teazing* ceases or relaxes — *Sedet, æternùmque sedebit.*

2. A commission? Yes: and what commission? A commission which never could have sat at all — which never could have been thought of at all — had it been supposed that, in either House, there exists any such sense as a sense of shame.

3. An enormous dilatory plea, set, like a gun, in a self-judication system; a transparent veil for corruption; a snug succedaneum to the still apprehended and eventually troublesome inquisition, of a not quite sufficiently corrupt Honourable House, — such is this commission: — a subterfuge, which, more than perhaps all others, has damaged the reputation of the principal, not to speak of the accomplices. In Matchless Constitution, that all-prevading and all-ruling principle, the self-judication principle, has now to that *local habitation*, which it has so long had, added *a name:* a name which, so long as the mass of corruption in which it has been hatched continues undissolved, will never cease to be remembered — remembered, in time and place, by every lover of justice and mankind, as occasion serves.

LORD ELDON. — VIII. "I am uncorrupt in office; and I can form no better wish for my country, than that my successor shall be penetrated with an equal *desire* to execute his duties with fidelity."

Observations. — 1. *I am uncorrupt!* And so a plea of *not guilty* was regarded by this defendant as sufficient in his case to destroy the effect of so matchless a mass of criminative evidence, and supersede the need of all justification and exculpative evidence!

Incorrupt? Oh yes: in every way in which it has not been possible for you to be corrupt, *that* you are. So far, this negative quality is yours. Make the most of it, and see what it will avail you. Remains, neither possessed, nor so much as pretended to, the whole remainder of appropriate moral aptitude, appropriate intellectual aptitude, and that appropriate active aptitude, without which, a man possessed in the highest degree of appropriate aptitude in both those other shapes, *may* in your situation be, *has* in your situation *been* — a nuisance.

Desire! And so, in an office such as that *of* Chief-Judge, and that but one out of a cluster of rich offices fed upon by the same insatiable jaws, *desire* is sufficient: *accomplishment*, or anything like an approach to it, supervacaneous!

Yes: that he *does* form no better wish for his country — this may be conceded to him without much difficulty: for, whatever be the situation, when a man has been disgraced in it by inaptitude, the least apt is to him, but too naturally, the least unacceptable successor. But, as to the *can*, this is really too much to be admitted: for, even a Lord Eldon — after rubbing his eyes, for the length of time necessary to rub out of them, for a moment, the *motes*, which keep so perpetually floating in them in the shape of doubts, — even a Lord Eldon might be *able* to see that desire and accomplishment are not exactly the same thing; and that, where the object is worth having, *desire* without *accomplishment* is not quite so good a thing as desire *with* accomplishment at the end of it. Put into this Chancellor's place, his housekeeper, supposing her to have any regard for the money it brings, would have this same desire — which, except the uncorruption, is all he can muster up courage to lay claim to, and which is so much more than can be conceded to him — the desire, in respect of *fidelity* and everything else, so far to execute the duties of it as to save herself from losing it.

Next to this, comes what has been seen already in his Lordship's concluding address to their Lordships. Of the visible condition of the defendant, no intimation is given in the report: to judge from what is given, a man who could with such a peroration close such a defence, must have been at the verge of a fainting fit: in which condition he shall, for the present, be left.

PAPER IX. — ON THE MILITIA.

(This Pape, consisting of a portion of the Constitutional Code, (viz. Ch. X. Defensive Force, § 3, Radicals who?) will be found in its proper place.)

PAPER X.

ON PUBLIC ACCOUNT KEEPING.

Complaints have of late been made, of the method at present pursued for making recordation, and appropriate publication, of the transactions of the several classes of functionaries, of whom the official establishment of the British government is composed; and of the pecuniary and *quasi-pecuniary* transactions more particularly. By high authority, it has been pronounced inadequate, and ill adapted to its professed purpose. To this, by that same authority, a substitution has been proposed, and *that* in the character of a well-adapted and adequate one. It consists in simply substituting, to the *method* and *phraseology* at present employed, the method and phraseology, which is called sometimes the *Italian*, sometimes the *double-entry* mode or system; and the use of which is confined to the case in which pecuniary profit and loss are conjunctly presented to view.

Against this change, so far as regards the use of this peculiar and technical phraseology, I protest on two grounds: — 1. That, instead of being conducive to, it is incompatible with, the design which, on this occasion, whether it actually be or no, ought to be entertained; namely, that of rendering the state of the accounts in question more effectually and extensively understood; 2. That, if introduced, it would of itself produce deterioration, to an unfathomable degree, in a form of government which assuredly stands not in need of any *such* change.

These evils will, when examined, be seen coalescing into use.

First, as to the *design*. What ought it to be? Answer, as above. To render the transactions in question as effectually *understood* as may be, and to that end as *intelligible* as may be, to those whose interests are at stake upon them; that is to say, in the first place, to the *representatives* of the people; in the next place, to the *people* themselves, constituents of those same representatives.

Now, then, in respect of *intelligibility*, what would be the effect of the introduction of this same Italian mode? So far from augmentation, it would be little less than destruction: and this, relation had as well to *constituents* as to *representatives*.

Method is one thing; phraseology is another: 1. First, as to *method*: that, by means of it, any addition would be made to the number of those by whom the transactions in question would be understood, remains to be proved; no determinate reason for thinking so, have I anywhere been able to find. Whatsoever, if anything, this same addition would be, might it not, to equal effect and with equal conveniency, in every respect, be made, by the phraseology in use with everybody, as well as by that which is peculiar to merchants? With little or no hesitation I answer in the affirmative: at any rate, that which may be asserted without even the smallest hesitation is, that whatsoever may be the advantage derivable from the *method*, never can it compensate for the evil inseparably attached to the unintelligibility of the *phraseology*.

2. Next and lastly, as to the *phraseology*. To the whole community, with the exception of the single class designated by the appellation of *merchants*, this phraseology is utterly unintelligible: to all those for whose use it is, or ought to be, designed, by those by whom the substitution of it to that which is universally intelligible, is proposed: Members of

Honourable House, and people without doors, included.

Of the number of those to whom it is unintelligible, compared with the number of those to whom it is intelligible, what is the amount? To any person whatsoever, the answer may be intrusted. Be it what it may, — say who can, that it will not suffice to ground the putting a decided exclusion upon the proposed change.

Now then for the other objection: — deterioration of the form of government. To a universally intelligible mode of giving expression, to the transactions of the functionaries of government, and in particular to the part which consists in the collection of the produce of the taxes, and the disposal made of it, substitute an almost universally unintelligible mode; what is the consequence? *Answer* — Exit Public Opinion: enter Darkness: such as that which forms the characteristic of absolute government. To Matchless Constitution may be substituted the government of Spain, Portugal, or Turkey: and this without responsibility, or danger in any shape, on the part of the authors of the change.

Obvious as these effects can scarcely fail to appear when once mentioned, to none of those persons by whom the subject has been taken into consideration do they appear to have presented themselves: neither to those by whom the change has been proposed, nor yet even to those by whom it has been opposed.

First, as to those by whom it has been *opposed*. These are — Messrs. *Brooksbank and Beltz*, two of the three commissioners for inquiry into the state of the public accounts. "*A wide difference exists* (say they) *between the business and circumstances of a trader and those of a* government department:" in the observation thus vague and unapplied consists the only objection made by them to the introduction of the Italian mode: of the distinction between *method* and *phraseology*, no intimation whatever is conveyed by it.

Next and lastly, as to those by whom the change has been *proposed*. Not without sincere regret is it, that, on this occasion, and for such a purpose, I hold up to view a production on so many other accounts so highly estimable as the work entitled "*Financial Reform, by Sir Henry Parnell, Baronet, M. P.*" late chairman of the committee on finance. *Pure*, once (p. 196,) *purest*, twice (pp. 192 and 197:)—in these two words are contained all the arguments I can find in that work, in favour of this same phraseology. "Mr. Abbot's proposal is," he says, p. 194, "to establish the Italian system in its *purest* form; and to those persons who are *practically* acquainted with the Italian system of accounts, the reasons on which Mr. Abbot founds his opinion of its being applicable to all official accounts, cannot but be," he says, p. 173, "completely satisfactory."*

"Applicable?" Unquestionably. But what is that to the purpose? Just nothing. Applicable means *capable* of being applied. But, of the truth of this proposition what need of opinion from that gentleman or anybody else, to make us fully satisfied? Applicable, or not applicable *with advantage?* — that is the question. And, to that question answer has *not* been given by Mr. Abbot; answer *has* been given *here*.

That, of the desire of these so highly intelligent and well-informed statesmen abovementioned, unintelligibility on the part of the subject-matter in question, and ignorance, next to entire, on the part of the persons in question, were not amongst the objects — I, who write this, am altogether satisfied. But of the desire of those by whom the recommendations made by the committee over which he [Sir Henry Parnell] presided were set at nought, and the existence of that same committee cut short, were or were not these among the objects? Relieved should I be from an anxiety eminently painful, were it, in this paper, consistent with sincerity, to answer in the negative.

"To bring forward a motion for the emolument of the persons in question" was, according to Mr. Chancellor of the Exchequer (if the account of the debate is to be believed,)† "*treating* them" (it should perhaps have been *placing* them) "in an invidious point of view:" — and, in effect, he, accordingly, on that same occasion, did what depended on him towards preventing their being placed in that same point of view.

But these same persons — who were they? *Answer* — "Members," says he, "of the Privy Council," — "a body composed of the Council of the Sovereign;" and afterwards, "the first judge in the land was included in it." — Prodigious! And so, in the opinion of this member of the Cabinet Council, be the man who he may, the servants of the crown have but to obtain the placing of him in a situation which affords them the means of putting into his pocket an indefinitely large portion of the produce of the taxes, — this done, nobody but themselves is to be informed of the amount of it. What the amount is of the booty thus determined to be screened from detection, the right honourable guardian of the public purse has not informed us. But if the imputation couched under the word *invidious* be all that he objects to, a sure and easy receipt

* Session of 1830. House of Commons Report, No. 159. "Copy of a letter from Mr. Abbot, late one of the commissioners," &c.

Parnell.—Purest, p. 192—Pure, 196—Purest, 197.

† *Morning Chronicle*, May 15, — debate of May 14.

for the wiping it off is at his command. It consists — in the giving publicity to the information in question, in the instance of every public functionary without distinction.

In and by the original committee on finance, of which the late Charles Abbott, afterwards Speaker, and not long ago ennobled by the title of Lord Colchester, was chairman, extensive were the disclosures of this sort made; and, as far as appeared, in endeavours to narrow them. This was in the years 1797–1798. Thirteen or fourteen years after, came the committee on finance, of which the chairman was the still living Mr. Henry Banks, the Lord Eldon of Honourable House. From the report made by that committee, no possibility was there of learning the aggregate of the emoluments received, in the instance of any one of the functionaries occupying the situations mentioned in it: so exquisite was the ingenuity by which the deed of darkness was accomplished.

In the eyes of the right honourable persons in question, is the imputation of harbouring this same design of darkness regarded as matter of importance?—is the clearing themselves of it considered by them as an object worth their regard? The means at their command are most effectual.

For and during many years in the latter part of the last century, for the use of the directors of the life-insurance company called the *Amicable Society*, was annually published, in conjunction with an almanac, a list of the situations of which the official establishment was composed, with the emolument attached to each in the shape of salary. At present, in the annual publication intituled the *Royal Calendar*, of these situations, or at any rate the greatest part of them, a list is published; but of emolument in the shape of salary, or in any other shape, in no such publication, or in any other publication, is any mention to be found.

Now, then, by order of some one of the constituted authorities, let a complete list be published of all those several situations, with the amount of the aggregate of the emolument respectively attached to them: and to the columns in which these aggregates are inserted, let there be added another, exhibiting the total of the emoluments received by the functionary in question, from all public sources taken together; with numeral figures, expressive of the pages in which the several situations, with their respective masses of emolument, are presented to view.

Against the proposition for throwing the light of day upon this part of the den of Cacus, the only argument adduced by the right honourable gentleman is composed of the word *invidious*. In the import of this same word the idea of *distinction* is included. Do away the distinction — set fire to the gas — illuminate *uno flatu* the whole den, as above proposed — extinguished is this argument. Some dictionary, dead or living, he will have to turn over for another such.

On the present occasion, — after what has been said on the subject of *unintelligibility*, is it worth while to say anything more of that same branch of art and science (for *science* I see it called) to which the attribute of *purity* has so unhappily been ascribed? Of fiction, and nothing else, is it composed: of a tissue of misrepresentations — of departures from truth — and these not merely useless, but much worse than useless. To *things*, relations all along ascribed, of which *things* are not susceptible: to *persons*, relative situations in which, on the occasion in question, these same persons are not placed. *Wine* is said to be *debtor* to *cloth*. To what use this absurd falsehood? What explanation of anything does it give? To what human being, who has not been drenching himself with this and the kindred falsehoods for weeks or months, can it present any idea, unless it be an illusive one, unless it be translated into the vulgar tongue? True it is, that, had this locution been originally applied to the presenting to view the ideas annexed to it by the professors of this art-and-science, — it might have served as well for the purpose as does the correspondent part and parcel of the vulgar tongue: but, having once been fixed in the habit of being applied to so different a purpose, thence comes the confusion, and the useless difficulty which stands opposed to all endeavours to understand it.

So much for confusion-spreading *proposition:* now (to speak in logical language) use for a delusive *term*. Enter *waste-book, cum totâ sequelâ suâ:* — *waste-book*, a book composed of paper the value of which is that of waste-paper. To an unadept mind, what other idea than this is it in the nature of this appellation to suggest? Yet is this one book the corner-stone, on which the truth and usefulness of all the others rest: — a book, error in which infects with correspondent error all the rest: — the original, of which, though in different forms, all those others are but copies. Call this book the *original* book, those others the *derivative* books, the delusion vanishes. Call this book the *chronological*, — those others the *logical* books, the matter being traced in different *orders*, according to the different purposes, — a further instruction is afforded.

It is one of the branches of that art-and-science, which teaches how to make plain things difficult. A curious and not altogether uninstructive parallel, is that which might be made between this *regular* and *technical* mode of account keeping (for by both these epithets do I see it honoured) and the technical and regular system of judicial procedure. It would

show to what a degree, by the leading-string held by blind custom, without any additional one tacked on by sinister interest, aberration from the rule of right is capable of being effected. Of this phraseology, if any use it have, the use consists in giving *brevity* to the mode of expression. Analogous is the use, in this case, to that of *short-hand*, as a substitute to ordinary hand, — to that of arithmetical notation as a substitute to ordinary orthography, — and to that of algebraic, as a substitute to arithmetical, notation. But small, in comparison, is the utmost service which, in this character, can be rendered by it: and on this ground, not on an imaginary one, by those who teach it, should the usefulness of it be placed.

In my *Constitutional Code* — to wit, in the already published volume of it — may be seen a section, in which, in the compass of sixty-eight pages, what is designed for an all-comprehensive set of books, for the exhibition of the accounts, pecuniary and quasi-pecuniary, of any government whatsoever, is presented to view. But for the bulk of it, it would have been included in this present miscellany. Official establishments, which it embraces in its view, are — not only those of this country, but those of any other country whatsoever.

To any attention, bestowed upon it by the only persons from whose attention to it any good to the community would ensue, — two objections there are, to the potency of which the author is duly sensible. No title had he, having the effect of a warrant from authority, for the undertaking of it. Instead of the £1600 a-year, or some such matter, from all the members of the community taken together, — 16*s.* from each of such of them as may vouchsafe to purchase it, is the remuneration he will receive from it: by which remuneration, in the case of this work, as in the case of almost all others by which he has endeavoured to render his labours useful to his own country and mankind, — his profits will, to a large amount, be left on the *minus* side.

Two objections there are, to its being regarded as worth the 16*s.* by those with whose title to receive money out of the taxes, Mr. Chancellor of the Exchequer is so effectually satisfied, by the consideration of the quantity thereof so received by them. Two objections, and each of them an unconquerable one. No such remuneration will be offered; and, were it offered, no such remuneration, — nor any remuneration, other than that which would be afforded by the acknowledgment of the usefulness of the work, — would be received.

But, let but a title, such as that of *privy councillor*, or were it even no other than that of *commissioner*, with £1600 a-year, or some such matter, be added to it — oh what a treasure it would be! Multiply the £1600 by ten, — multiplied by the same number would be the value of the work! Multiply it by a hundred, — the value would be multiplied an hundred-fold! Multiply it by 10,000, its value would outstrip that of Holy Writ; — and prostrate before it would lie the whole population of the cabinet, accompanied and sanctified by his Grace of Canterbury, and all those other paragons of piety, whose regard for that same Holy Writ is manifested by the fineness of their sleeves, and the Tyrian dye of their servants' liveries. Included are all these propositions, in that mathematical axiom, which is the key-stone of Matchless Constitution — *Aptitude is* AS *opulence.*

*** Since the proof of this sheet came in, a royal calendar has been taken in hand, of so recent a date as the year 1808; and in it are seen names of official situations, with salaries annexed, as in the case of the almanack mentioned in page 385. What was the year in which this mention of salaries was for the first time omitted, and what the state of the administration in that same year, may be curious enough subjects of inquiry.

PAPER XI.

CONSTITUTIONAL CODE — TABLE OF CONTENTS

AS SHOWN BY TITLES OF CHAPTER AND SECTIONS.

(This will be found in its proper place.)

A

COMMENTARY

ON

MR. HUMPHREYS' REAL PROPERTY CODE,

BY

JEREMY BENTHAM.

FROM THE

WESTMINSTER REVIEW, No. XII., FOR OCTOBER 1826.

BEING

A REVIEW

OF

"OBSERVATIONS ON THE ACTUAL STATE OF THE ENGLISH LAW OF REAL PROPERTY, WITH THE OUTLINE OF A CODE. BY JAMES HUMPHREYS, ESQ. of Lincoln's Inn, Barrister." 8vo. Murray. London.

*** *The following Note was prefixed to the article by the Editor of the Westminster Review:—*

[We conclude this Number of the Review with a Supplement, in a form unusual in similar periodical publications. In the conduct of this work we may lay more than an ordinary claim to the use of the personal plural, for it is rare that our opinions are not shared by the whole of our corps, and still rarer for any of our articles to reach the public without having previously passed the ordeal of more than one judgment. The following composition is published as it came from the hands of the writer; its merits are as peculiar as its style, and it would be an attempt equally vain as useless, to give to such an article a general uniform; and to attempt to conceal the individuality of the manner, if not of the matter. Holding, as we do, the intellectual qualities of Mr. Bentham in the very highest esteem, and having, during our course, invariably maintained the legislative views of this distinguished juris-consult, whom we regard as the great founder of a new and better system, it may readily be supposed that we were anxious to ascertain his opinion of a work, respecting which, from its nature and subject, he may be justly considered as the highest authority. This opinion has been communicated to us in the following form; and we publish it unchanged in the most trifling particular. If the weight which Mr. Bentham's name must carry, when thus united with that of Mr. Humphreys, accelerate in the least the progress of that legal reform which is now beginning to be so loudly demanded, we shall be pardoned for having deviated in this especial instance from the approved form of conveying the arguments of a Reviewer.—*Ed.*]

*** On the 6th June 1828, Commissioners were appointed by letters-patent, "to make a diligent and full inquiry into the law of England respecting real property, and the various interests therein, and the methods and forms of alienating, conveying, and transferring the same, and of assuring the titles thereto, for the purpose of ascertaining and making known whether any, and what, improvements can be made therein." This commission made four several reports, which were ordered by the House of Commons to be printed, of the following dates:—The first, 20th May 1829 (House of Commons Papers, 1829, X. 1;)—the second, 29th June 1830 (House of Commons Papers, 1830, XI. 1;)—the third, 24th May 1832 (House of Commons Papers, 1831-2, XXII. 321;)—and the fourth, 25th April 1833 (House of Commons Papers, 1833, XXII. 1.) In the course of sessions 1832 and 1833, several Acts were passed for amending the law of real property in England, the provisions of which were chiefly founded on the suggestions of the commissioners. They are, 2 & 3 W. IV. c. 71 (1st August 1832;) 2 & 3 W. IV. c. 100 (9th August 1832;) 3 & 4 W. IV. c. 27 (24th July 1833;) 3 & 4 W. IV. c. 74 (28th August 1833;) 3 & 4 W. IV. c. 105 (29th August 1833;) and 3 & 4 W. IV. c. 106 (29th August 1833.) In 1834, a Bill "for establishing a General Register of all Deeds and Instruments affecting Real Property in England and Wales," was introduced in the House of Commons, where the motion for the second reading was negatived on the 7th May by 161 to 45. Of the above-mentioned intended and completed reforms, it is impossible, from the extent of the subject, to give any outline, and the reader is merely referred to the most authentic sources of information on the subject, that he may be able to compare what has been done or accomplished, with the suggestions of Bentham in the following tract, and that which immediately succeeds it.—*Ed.*

COMMENTARY

ON

HUMPHREYS' REAL PROPERTY CODE.

Of a work such as this, the publication forms an epoch: in law certainly; I had almost said in history. In possession; in expectancy; in prospect: in project — have you any property in the shape thus denominated? Deep, in proportion to the value of it, is the interest you have in this work; signal and unprecedented your obligation to the author of it. Lay even property in this shape out of the question; still, if by those on whose will everything depends, his exertions be but duly seconded, strong will be the ground you will have for felicitating yourself on the appearance of this star in the horizon of jurisprudence: for of all that is valuable to man, nothing is there to which, directly or indirectly, its beneficial influence will not be found to extend. It has, indeed, for its direct object and main subject-matter, that species alone of property to which English lawyers, and they alone, have so absurdly and uncharacteristically, instead of *immoveable*, given the name of *real*; but, for everything else, to which it is in the nature of law to afford security, — security, in a proportion as yet unexampled, — will, if his plan be carried into execution, be the effect.

Not less signal is the moral than the intellectual merit manifested by it. A young briefless lawyer, who, on a survey taken of the road to advancement, had been fortunate enough to descry this as yet untrodden track, and bold enough to enter upon it, — this was the sort of character, in which, in my imagination, the author had been pourtrayed. To one who, in the shape of *business*, had nothing to lose, — distinction, even if that were all — distinction, how barren soever — would of course have its value. Imagine, any one, my astonishment, when the information reached me, that, instead of a young adventurer, the work had for its author a man advanced in years; a conveyancer, at the very head of his profession; a reformist who, by every page written, and every hour thus spent, in an occupation not less laborious than meritorious, had thus been making a sacrifice of pecuniary interest on the altar of public good.

Proportioned to the service he has rendered to all who are not lawyers, is the ill-will which, with few exceptions indeed, if man be man, he cannot but have called forth, in the breasts of all, who, proportioned to the advancement given to the art-and-science, see, as they cannot but see, the defalcation made from the profit of the trade.

Sincere, if ever admiration was, is that which is here expressed: whether it be a blind one, what follows will soon show.

Hale, with all his merits; Hale, like all lawyers who had gone before him, and almost all who have come after him, was no reformer: nothing better than an expounder: everything stated by him was stated as he found it, or conceived it to be: no inquiries as to what it ought to be: in the eyes of lawyers — not to speak of their dupes — that is to say, as yet, the generality of non-lawyers — the *is* and the *ought to be* (or, as in Greek it would be so much better — the τὸ ὄν and the τὸ δεον, from which last, Ethics has received the more expressive name of *Deontology*,) were one and indivisible. By David Hume, in his Treatise on Human Nature, the universality of this practice of confounding the two so different objects was first held up to view.

As to Blackstone, flagrant as were the abominations, which at every page he had to wade through must have met his eye — not to extirpate them, not to expose them, was his endeavour, but to cover and preserve them; and which of the two quantities has been the greater — the service he has done to the people in the one shape, or the disservice in the other — both being to his narrow mind, probably, alike objects of indifference — is a question easier to propose than solve.

Before this work came out, *code* and *codification* were rank *theory*; theory; and, as such, objects of sincere horror, with as much of pretended contempt as would mix up with it. Now, at length, they are become *practice*; contempt has been repulsed by its own image, and *horror* has given way to praise. But now to particulars.

Law of landed property being the field, — follow eight distinguishable heads, under which, it is believed, may be ranked Mr. Humphreys' proposed improvements; some more, some less, explicitly declared.

1. Substitution of apt, to the present unapt, forms of the instruments by which landed

property is disposed of — say, for shortness, of *conveyancing instruments*, or *formulæ*.

2. Melioration and extension of the *registration* system, as applied to conveyances.

3. In the case of *freeholds*, substitution of the generally prevalent to the anomalous courses of descent, namely, *Gavelkind* and *Borough English*.

4. Reduction of *copyholds* to the state of freeholds.

5. All-comprehensive *partition* of common lands.

6. Substitution of *a really existing code*, to the present compound, of a really existing, with an imaginary *civil*, or say *non-penal*, code of law, so far as relates to landed property. *Codification* this, in contradistinction to *consolidation*.

7. Appropriate addition to the *judiciary establishment*, in so far as may be necessary to the giving execution and effect to the *substantive* part of such proposed code.

8. Substitution of an apt, to the present unapt, system of *judicial procedure*, or say *adjective law*, in so far as necessary to that same end.

Of the separation thus made, paramount, with a view to practice, is, in my view of the matter at least, the importance. Probability of adoption and dispatch in execution join in the requisition, that, of so vast a whole, the number of separate parts be maximized. 1. *Probability of adoption:* because, let the whole plan contain, say two parts, both of them beneficial to the universal interest, but opposed respectively by two distinct particular and thence sinister interests, — one of these interests — not by itself, but with the addition of the other, being strong enough to throw the plan out, — one of them may, notwithstanding the opposition, be carried into effect: whereas, if the separation had not been made, both sinister interests would have stood opposed to it, and there would have been an end to it. Thus stands the matter, in the case of *two*, and no more than two, mutually unconnected sinister interests; but, the greater the number of them, the smaller will, by the supposition, be the number of the individuals united in opposition by each; and the greater, accordingly, the number of universally beneficial arrangements possessing a chance of being carried into effect. For want of such separation, — many are the salutary arrangements which, if separately proposed, would have found no opponent, but which, by being conjointly proposed, have been lost.

Then as to *dispatch:* if appositely made, the further the separation is carried, the greater the number of appropriately apt hands, or sets of hands, among which it may be distributed.

Then again as to *appropriate aptitude:* the further the separation is carried, the greater the chance of finding a hand, or set of hands, in a superior degree apt, each of them for one part, though they would not respectively have been equally so for any other.

Now for the application. I. Improvement the first. *Substitution of apt to unapt formulæ.* To this I allot the first rank. Why? Because least unlikely to be adopted, and most speedily capable of being effected.

Take any one of them, for example. In so far as, for its being employed and carried into effect, it requires not any alteration in the existing tenor of the statute law, or in the course of judicial practice, — it is capable of being carried into practice by the philanthropist himself, by whose ingenuity it has been devised: and, the greater the number of the improvements thus happily circumstanced, the more extensive will be the number of them effected by this most simple of all means.

Unhappily, by this alone, without assistance from statute law, not very extensive, it is feared, can be the effect produced. At any rate, for each distinguishable improvement, the less the assistance needed from that so difficultly-moved machinery, the better the chance.

Of the load of evil in all shapes with which the instruments in question are oppressed, — *lengthiness* to wit, thence *unintelligibility*, *expensiveness*, and *dilatoriness* — of all this evil the main efficient causes are shown to be composed of the work given to needless and useless trustees, in whom no confidence is reposed, and the addition of the blind agency of judiciary functionaries to the mental labour of professional draughtsmen, in the fabrication of the mendacious and pick-pocket instruments rendered necessary, under the name of *fines* and *recoveries*. True it is — *this* mass of abuse could not be cleared away by any other hand than that of parliament. But, by that of any professional draughtsman, not inconsiderable are the improvements that may be introduced: the endless sentences at present in use may be broken down, and reduced to the scantling of those employed, on the like occasions in every other country, and on all other occasions in all countries: — for the purpose of enabling the most unpractised eye to see its way clearly over the present labyrinth, and take repose wherever it found need, — the several topics, distinguishable in those huge masses of matter, which in the present practice are compressed together into the compass of one sentence, may be presented to view by their already universally known denominations: the matter, belonging to each such topic, may be formed into a separate sentence; and to each such sentence, to save the need of repeating it *in terminis*, or by a little less lengthy general description, a numerical appellative may be allotted. Of the general indication thus given, exemplification, and thence

(it is hoped) elucidation, will be seen in the course of the ensuing pages.

As to the clearing the system of the other more highly morbid symptoms, — I am but too sensible how far, even with these additions, his plan of operation would fall short of meeting the disorder with anything like an all-sufficient remedy. Still, however, I see in it the least unpromising of all his generous enterprises. In respect of the force of the sinister interests it would have to encounter, it stands less unfavourably circumstanced than any other. By rendering conveyances, and the contracts embodied in them, somewhat less unintelligible to parties and other *interessees*, — it would lessen the mass of suffering in the shape of disputes and disappointments, and in so far lessen the abundance of the lawyer's harvest: it would reduce, in some degree, the profit of the conveyancers' company, — and of the firm of Eldon and Co. in Chancery and the House of Lords: but it would not, as any system of procedure capable of fulfilling its professed end would, go to the blowing up the manufactory of factitious litigation at one explosion, — and, at the first proposal of it, call up, in defence of Matchless Constitution, that judiciary system by which, to ninety-nine hundredths of the people, access is denied to so much as a chance for justice.

II. Improvement the second. *Giving efficacy and extension to Registration.* For this purpose I shall have to treat our artist with a sight of an instrument (a fruit of female ingenuity) suited to this one of his beneficent purposes, in a degree beyond what he can have had any conception of.

III. Improvement the third. *Abolition of the anomalous courses of Descent.* Absolutely speaking, yes: but comparatively speaking, no great good seems here to be expected: on the other hand, no great resistance to be apprehended.

True it is, that this improvement, the subject-matter of it being an insulated one, is in its nature capable of being carried into effect by itself. But, setting aside the supposition of an all-comprehensive code, — or at any rate an all-comprehensive *property code*, — the benefit produced by it would be comparatively inconsiderable; its principle, if not only one, being that which it would have in the character of an instrument of simplification.

IV. Improvement the fourth. *Reduction of Copyholds to the state of Freeholds.* Highly beneficial this: but at the same time unavoidably operose and tedious. The sooner indeed it were begun, the better; but, in no other shape need, or should, the commencement of the course of improvement wait either for the consummation or the commencement of it. Pride would set in array against it the aristocracy of the country, in their character of lords of manors: pecuniary interest, the lawyer-class in the character of stewards: not but that, in the long-run, pecuniary compensation *ab intrà*, with or without a little of ditto *ab extrà*, — at the expense of the whole community, to whom the whole rule of action would thereby be rendered so much the more accessible, — might peradventure gain the votes of the one, and quiet the alarms and clamours of the other.

V. Improvement the fifth. *Partition of Common Lands.* To a certain extent, this improvement is comprised in that which consists in the conversion of *copyholds* into *freeholds:* to a certain other extent, that is to say, in so far as the land is already in a state of freehold — or, being copyhold, can be divided into separate parcels, leaving the manorial rights in other respects untouched, — it will require the arrangements, for the effectuation of which the *general inclosure act* was intended, and the several particular inclosure acts have been, and continue to be intended. As to this matter, true it is, that the greater the degree in which the provisions of the particular acts can be generalized, and those of the general act improved upon, of course so much the better: and propositions for this purpose may of course be expected from the ingenuity, experience, and public spirit of Mr. Humphreys. But, in addition to *those* efficient causes, others of a peculiar nature, and not quite so prompt in growth, are required; that is to say, *capital* in proportionate quantity — *capital* in the appropriate hands — and a state of things such as will admit of the giving to it the direction in question to advantage. Now, as to *capital*, it cannot be made to accumulate in, or find its way into, these same hands, with quite so much celerity as may be given to the operation of drawing up an act of parliament: and a state of things which affords probability to the opening of the trade in corn to foreign cultivators is but little favourable to increase in the home-production of it. Not that, by these circumstances, any objection is opposed to that part of our learned reformist's plan which consists in the procurement of the appropriate mass of *information* subservient to these same purposes. But of that in its place.

VI. VII. VIII. Improvement sixth, seventh, and eighth — *Codification.* Substitution of really existing law to fictitious: Substitution of an apt to an unapt judiciary establishment and system of procedure: as to these three parts in conjunction, there will be more or less to say before this article is at a close.

Now for a trespass on his patience. The time is come, when the scalpel must be set to work: state of it much rougher than the anatomist could have wished: but neither time nor space admit of that smoothness which would otherwise have been endeavoured to be given to it. More than fifty

years ago, I took it up for the first time, with Blackstone lying on the table. The subject being so different, it is with affections correspondently different, and proportionable reluctance, that I take it in hand now. In Blackstone, every abuse has its varnish or its apology: in Humphreys, none. Should the liberties now taken have any such effect as that of calling forth like for like, my gratitude will not be less sincere than my admiration is now.

Observations applying to all three formulæ viewed together, are the following: —

I. *Emendandum the first. Subject-matter, length of each one of the three pattern instruments, and symmetry as between the three:* Description of the subject-matter of disposition insufficient, and thence, at the same time, by the whole amount redundant and useless. Of the subject-matter of a *sale*, the number of diversifications being, practically speaking, *infinite* — no one can, with propriety and safety, be taken for, and thence copied as, the representative of *any* other: much less of *all* others. In each instance, what should be given is — in the body of the instrument, a generic designation, as short as possible so as to answer the purpose: in the *schedule* (a sort of appendage referred to, but not exhibited in the author's draught,) a description, the particulars of which must, in the nature of the case, be all of them *individual*. Of a building, for example, the *generic* description will, of course, be of one sort; of a piece of land, of an altogether different sort. As to the individual description — for the purpose here in question, in addition to other purposes, all *habitations* should be *numbered*. For the process of enumeration, an all-comprehensive plan may be seen in my parliamentary reform bill. Of a piece of land, on which there is no building, the description of the *site* will be given, by giving the name of the nearest road, with the several names of the several fields of which it is composed. In respect of the piece of land, there can be no difficulty: since, in fact and of necessity, in whichever way held, whether in commonalty or in severalty, every field has its name. Of the compound subject-matters, composed of buildings with land annexed, the mode of description is rendered familiar to everybody by those printed *papers of particulars* which are employed on the occasion of sales, whether made by auction or by hand.

Behold here, then, already drawn, though by an intrusive hand, the proper contents of the *schedule:* say, rather, the *only* proper. For, what other description of the subject-matter can be so proper for a deed of sale, as the very one to which, by the agreement to purchase, the purchaser had given his assent?

But, the knot of lawyers must be paid — paid, for doing, in not improbably a bad manner, what has been already done in the best. If, for appropriate accuracy, the scientific eye affords a promise of being of use (and I do not say but that in some instances so it may be,) the proper time for its operation is *antecedent*, not subsequent, to the adjustment of the subject-matter of the conveyance — the *paper of particulars*.

If this be so, useless then is every syllable occupied in individualizing the subject-matter in the body of the deed.

Behold now the quantity of surplusage thus employed; employed in giving to conception difficulty, and to expense increase. In the deed of sale, lines 16, whereof surplusage in this form, 5: in the mortgage-deed, lines 19, whereof surplusage in this form, 11: in the marriage-settlement deed, lines 96, surplusage in this form, 11: lines in all three together, 131: whereof surplusage in this, besides other forms, 27.*

Now as to length of *sentences*, separately considered. The more lengthy the sentence, the greater the fatigue of him whose misfortune it is to be subjected, on one account or other, to the obligation of reading it and lodging the contents in his mind. When the fatigue rises to a certain pitch, — such is the reader's anxiety to reach the end of his labour, — that, for want of a resting place, he slides over the topics, without dwelling upon any of them the length of time necessary to the impregnating his mind with an adequate conception of it: on the other hand, let it be broken down into its several distinguishable topics, — so many topics, so many sentences; so many sentences, so many resting-places: and whatsoever topic requires particular consideration, will be considered at full leisure: on time wasted in disentangling it from the rest.

What is more, no danger of the draughtsman's own mind losing itself in the mizmaze. This apprehension — is it a fanciful one? In proof of its well-groundedness, I call two witnesses: one of them, our learned reformist himself, the vast reduction, made by him in the extent of the labyrinth, notwithstanding; the other, no less a personage than a learned lord, the Lord Advocate of Scotland.

1. Enter, first, our learned author. — Evidence of bewilderedness, an offence against the laws of Priscian. *Locus delicti*, Family Settlement Deed: — *Corpus delicti* (as the Romanists say,) the words "*convey, charge, and settle.*" The loves of the *parts of speech* are no secret to any boy, who, in any one of the royal schools, has been initiated in the gymnastic exercise, of which a poetical grammar is the instrument. Here, so it is, that, to enable them to beget a meaning, the three amorous *verbs* require, each of them in the shape of *a preposition*, a different mate: *convey, to; charge, with; settle, on.* Now, then,

* These proportions are printed as in the first edition; in the present, the number of lines in each deed being respectively 24, 27, and 131, the number of surplus lines will be correspondingly increased. — *Ed.*

as to the fate of these same lovers. After a long and adventureful period of unsatisfied desire, burning, in one instance, through a course of not fewer than 15 out of the 96 lines, *convey* is at last made happy in the embraces of his dear *to; charge*, in the arms of *with*. Not so with the luckless *settle*. In vain has the wood been hunted over for a mate for him; no such comfort for him is to be found, and he dies childless.

Not that *Miss Campbell*, for whom the benefit, attached to the burthen conveyed by the verb *charge*, is intended, — is, at the end of the story, disappointed of it; for, in a recess of the wood (candour requires the confession) the preposition *to* steps in at last, steps in a second time to her assistance; and her two hundred a-year pin-money, and five hundred a-year jointure, form the result.

2. Enter now *Lord Advocate*. — If a warrant, — from practice, power, and dignity, in high situations, — can afford consolation under the imputation of a grammatical peccadillo, the learned delinquent needs not be inconsolable.

Opening the House of Commons folio, entituled "Return, Parochial Education, Scotland, Order for Printing, 27th February and 21st May, 1826," you will find it written in page 3, "Letter from the Lord Advocate of Scotland to Henry Hobhouse, Esq." Follows here what is relevant to the present purpose; what is not relevant being eliminated.

"I had the honour to receive your letter, stating, that the king, having been pleased to comply with an humble address *for*" (the letter-press is thus italicized) "an account showing," (then follows the matter of a folio page) "and desiring" (mark here the king, instead of *commanding* — Oh! treason! *desiring* — deprived of all command, and reduced *to desire!*) "desiring that I would take the necessary steps 'for *procuring*, &c. and transmit, &c., that it might, &c. previous to being laid before the House of Commons.'" Well — the king having been pleased, what then? Nothing. For at the word *Commons* ends the paragraph, closed by a full-stop. Then comes the next, beginning with "I beg leave to state that, in obedience to the above order, it had occurred to me," and so forth.

Now, as to the effect produced on the faculties of the pre-eminently learned composer, by the folio page — the unbegun and unended sentence which, lest the like effect should be produced on the mind of the reader, is here omitted. — Such is its narcotic quality, that while dragging on with it, he falls asleep, and in the course of his sleep dreams of a certain "order," to which he is rendering obedience. Rubbing his eyes, — "the above order," cries he. — Order? *What* order? Look the whole page through, no such thing as *an order* will you find.

II. *Emendandum the second: in the three patterns taken together, another feature of redundance: and the redundance pregnant with error on the part of learners.* Of the particulars in question, the tenor different in each species of deed: yet, whatever is capable of being taken for the subject-matter of a marriage settlement, is alike capable of being taken for the subject-matter of a sale, or a mortgage. Evil effects three: 1. Error liable to be produced in the minds of learners, in supposing the general necessity of the difference exhibited in the individual case; 2. and 3. Perplexity, and waste of labour, in examining the three, to ascertain whether such necessity has place. Sharers in these dangers, non-lawyers all: law-students as many, and tyro-lawyers not a few.

Note that, on the author's own plan, — between the two species of dispositions, there are but two points of difference: one is — *that*, to which expression is given, by the substitution of the word *charge* in the deed of mortgage to the word *sell* in the deed of sale: the other regards the mode and result of the re-payment to be made of the money lent. Had the exhibition been thus confined to the points of difference, would not the aid given to conception have been rather more effectual? Of needless diversity, another bad effect is — the distracting the attention from the needful. "*Eadem natura, eadem nomenclatura.*" (Same the ideas, same the words should be.) In contemplation of the above inconvenveniences, this rule has been ventured to be delivered elsewhere. If it be worth remembering, the jingle in the Latin, the metre in the English, may have their use. In composition for ordinary purposes, the opposite propensity is in these days prevalent: when the import meant to be conveyed is the same, to find for each occasion a different expression, is the task the writer sets himself. Harmless, when clear and muddy, right and wrong, are matters of indifference: Not altogether so in legal instruments, on which every thing that is dear to man depends.

III. *Emendandum the third. Sentences more lengthy than necessary.* Lengthiness of the whole of a discourse is one thing: lengthiness of these its component parts, another. Of the lengthiness of the whole, consequences such as have just been seen, are the result. Lengthiness of the parts separately considered is the imperfection now more particularly meant to be brought to view. By the manner of printing, it looks as if the reduction of the apparent, superadded to that of the real, length of the *whole*, had been among the objects of our learned reformist's ambition.

As to paragraphs, in no one of the three instruments does the letter-press exhibit the appearance of more than one. True, as to sentences, in the *deed of sale*, you might, if

hard pushed, make any number, from *one* to *five*, according as you pointed the paragraph: though by the punctuation *one* only is *there* exhibited. But, in the *mortgage deed*, which in the length of the whole is much the same as that of the other, you cannot make more than *one*.

As to the *marriage-settlement deed*, not a single resting place was I able to find, till I came to the word *Allen* in the *second* page, line 24:* quantity of matter travelled through, these 24 lines added to the 26 lines in page the first: — total quantity, fifty lines: — more than half of the whole, with its three full pages, and its 96 lines. Here at length it is — that, in breach, as it should seem, of his original plan, as indicated by the letter-press, our learned draughtsman, — so completely had he run himself out of breath, — has, in compassion for self and readers, though it should seem not without reluctance, put down a full stop.

In page 3, line 14, having a *proviso* to put in, he of necessity begins a fresh sentence: but, as if to make us believe that no addition is thereby made to the number of the sentences, he has done by us (pardon the expression) rather unfairly: putting, instead of a period, no more than a comma, at the close of it. So again, when he comes to line 25 of this same third page, he plays us a similar trick: and, as if the better to disguise it, — at the commencement of this *last* proviso, he omits the distinctive type employed for the assistance of the eye at the commencement of the *first*.

Thus it is that, after so much as has been done by our learned reformist in the way of self-purification — purification of his style from the malady of lengthiness, the leprosy of lawyer-craft, still that which has been seen has as yet cleaved to it: to complete the purification, a little sprinkling, such as is here offered, of the cleansing water, remains wanting to it.

IV. *Emendandum the fourth. Indication of Topics, none.* Horrific, of course, to learned eyes, will be so flagrant an innovation, as the one, the absence of which is thus audaciously made a matter of charge. *Lay-gents*, however — and for them alone am I of counsel — *Lay-gents* will, I flatter myself, see a convenience in it. Besides the clearness and promptitude it gives to conception, it performs the function of a Macadamizing hammer, in breaking down the aggregate mass; so many topics, so many denominations; so many denominations, so many sentences.

So much as to lengthiness on the part of the discourse. Now as to the consequences of it on the part of the readers. For my own part, (ex-learned as I am, and therefore, if ever, no longer learned — in the law in general, and in conveyancing law in particular, never learned at all, till I got this smattering at the feet of my Gamaliel;) — for my own part, I confess my perplexity to have been extreme; as (I fear) will, by blunders, in I know not what number, be but too amply testified. Nor can I (for I am a little out of humour, and revenge is sweet;) nor can I (I say) altogether suppress my surprise, that in this perplexity I have had a sharer in my learned master himself: — witness, *inter alia*, the same *exception* thrice imbedded, twice repeated, at the expense of four lines out of the 96,† in this one principal paragraph.

Apropos of these same *exception clauses*, I may, perhaps, take the liberty of submitting to his consideration the course which anybody may take for evolving, and which I always take for avoiding, such involvements; but this, if anywhere, must be in another place. At any rate, examples in abundance may be seen in "Official Aptitude Maximized," &c. just issuing from the press.

At the present writing, I must not neglect my clients: least of all my fair one, the heroine of the piece, for whose interest, — how ill-soever our learned reformist may think of me for the preference, — I cannot help feeling rather more solicitude than for his: — she having so much more at stake; and, in this her approaching condition, having so many ladies fair to share with her in the exigencies belonging to it. No: I will not think so meanly of her understanding, as not to suppose that, — how happy soever in her *Mrs. Allen* state, — it might not, on some occasion or other, occur to her, in her anxiety for the dear little ones, to cast an eye over this her *magna charta*, and, in its pages, as in a horoscope, seek to read their fate. This being supposed, — it cannot, I think, but be more or less matter of accommodation to her, to find in those same pages a possibility of understanding it. This accommodation, in so far as time and space would allow, it has, in the way that has been seen — and will, in another way, be more particularly seen, — been my humble endeavour to supply her with.

To render perceptible to sense the degree of improvement introduced by him in respect of lengthiness, the ingenuity of my learned master has, with happy effect, exhibited, in parallel pages, his proposed instruments, framed upon his reduced scale, — placing them by the side of those which he found in use. By the long succession of vacancies, the attention of the reader is in every two pages drawn anew to the difference; vacancies, in the deed of sale, 20; in the mortgage deed, 10; in the marriage settlement, 23. In the mind of his adventurous pupil, ambition, not altogether unmixed with a dash of envy and jealousy, has inspired a similar course; the dwarf upon the giant's shoulders is an emblem which the temerity will be apt to present to

* In line 67 of the Draught in this Edition.

† Here 6 out of the 131.

recollection in the minds of readers. How small the utmost ulterior reduction I have been able to effect, will be obvious to every eye.

By the particular type employed in the re-print here given of author's draught, indication is given of most of the words regarded as capable of being eliminated, without prejudice either to *intelligibility* or to *certainty*, supposing the form exhibited in the reviewer's draught substituted. In the reviewer's draught a further liberty is taken, by the insertion of a few additional topics, which, for the reasons given in the notes, afforded a prospect of being of use. By a correspondent sign these also are rendered, in like manner, more readily distinguishable.

I. Deed of Sale.

Author's Draught. *(No Topics given.)*

"Proposed Form of a Conveyance to a Purchaser[a]

"**This deed made**[a] *the 25th day of March* 1926, **Between** *Andrew Allen, of* **of the one part,**[b] **and** *Benedict Butler, of* **of the other part, Witnesseth, that,** in consideration of £1,000 *sterling,*[c] **by the said Benedict Butler, now paid to the said Andrew Allen,** for the absolute purchase[d] **of the property hereinafter mentioned, The said** *Andrew Allen* **Doth sell**[e] **and convey unto the said Benedict Butler, All that**[f] **messuage with the out-buildings, garden, and other appurtenances**[g] **thereto belonging. And all those several parcels of arable meadow and pasture land therewith held, which premises contain in the whole five hundred acres, and are situate in the** parish of *Weston,* **in the** county of *Salop,* **and are now occupied by William Woodrow, And the same do together form a** Farm **usually called** *the Hope Farm,* **All which messuages and lands are** particularly described in the Schedule hereto[h] annext **by the names, quantities, qualities situations and other circumstances necessary for the distinction thereof."**

[a] The words regarded as superfluous are distinguished by the black letter; but in some instances simple elimination may not be sufficient: *substitution* may be necessary: as to these, see notes on *Reviewer's Draught.* The words employable in a blank form are in Roman characters; those which must be different on each individual occasion, in italics. So likewise in the deed of mortgage. To the marriage settlement, for reasons mentioned in note (1) thereto, these differences in the type do not extend, except as to the black letter in a few parts.

I. Deed of Sale. Allen *to* Butler, *anno* 1925.

Reviewer's Draught,[a] *(with Topics.)*

I. *Parties Described.*

No.

1. Seller's name.[a] *Andrew Allen.*
2. Seller's condition.[b] *Esquire.*
3. Seller's habitation.[c] County, *Shropshire;* Parish, *Weston;* Spot, *Allen Hall.*
4. Purchaser's name. *Benedict Butler.*
5. Purchaser's condition. *Butcher.*
6. Purchaser's habitation. County, *Shropshire;* Parish, *Weston;* Spot, *Fore Street.*

II. *Subject-Matter Described.*

7. Subject-matter of the sale — its species.[d] *A Farm.*
8. Subject-matter of the sale — its individual description. See Paper of Particulars hereto annext, marked A, and signed by the parties.

III. *Equivalent given for the Subject-Matter.*

9. Purchase money.[e] *One thousand pounds.*

IV. *Time, Place, and Tokens of Agreement.*

10. Seller's name in his hand-writing,[f] in token of agreement. *Andrew Allen.*
11. Day on which seller's name was written. *April first* 1925.
12. Place[b] in which seller's name was written. *Allen Hall,* near *Weston, Shropshire.*
13. Purchaser's name in his hand-writing, in token of agreement.[f] *Benedict Butler.*
14. Day on which purchaser's name was written. *April first* 1925.
15. Place in which purchaser's name was written. *Weston, Shropshire.*

[a] What is in Roman type, being of general application, may be in print; that which, being in each instance different, cannot be included in the letter-press, is shown by the *italics.* So in the mortgage deed and deed of settlement. The numbers, the addition of which is proposed by the reviewer are in smaller type.

Notes on Author's Draught.

[a] *This deed made.*] Pregnant — always with ambiguity, frequently with falsehood, sometimes with deception and unexpected loss — loss to the amount of the whole value of the property, is this word *made.* Made? To which of a number of persons in quality of *maker* or *makers,* does this participle make implied reference? The draughtsman by whom *preparation,* or the parties by whom *adoption* and *authentication* are given to it? I say *to which:* — for, seldom does it happen that the two so different operations, are the work of the same day: not unfrequently days, weeks, or months — not to say years — must, in the nature of the case, intervene between the performance of the draughtsman's part, and the performance or performances of the part or parts of the party or parties; in particular, on the purchaser's side. On each side of the transaction, what may happen is — that *parties* in any number may be separated from each other by any interval in the field *of space;* and, in consequence, the *acts* by any interval in the field of *time.* Moreover, in the case of any one or more of them, payment may be divided amongst *times* in any number; it may be made, as the phrase is, by *instalments.*

Here, then, is a gordian knot, which, somewhere or other, and somehow or other, Judge and Co. must have cut by their instrument of all-work — *falsehood*. Of the statement here in question, the *truth* has, somewhere or other, been pronounced immaterial. But — in the nature of the case, far indeed is it from being so: it is of no small importance. While without prejudice to the currency of the instrument, a false *place* of signature or a false time, or both, may be inserted, — a forgerer is comparatively at his ease: — not so where place and time are, each of them, required to be individualized. In, for example, the *house* asserted in the instrument, — on the *day* asserted in the instrument, — was the party, in fact, actually present? In these questions may be seen an obvious subject-matter, for an inquiry, — the searchingness of which, a forgery will be in no common degree fortunate, if it abides.

[b] *Part.*] In the correspondent place in the mortgage deed, this word is omitted, supposed by error of the press.

[c] £1000 *sterling.*] Sums should be expressed rather in words than in figures. *Example:* draughts on bankers. *Reason:* in figures, danger of ambiguous delineation, and subsequent falsification: accordingly, in the author's deed, words are employed. *Sterling?* In these days, is there any use in this word? Yes; to distinguish English, not only from Scottish pounds, but from the pounds of several other nations: in Ireland and the distant dependencies, to distinguish real money, from fictitious — called *currency*.

[d] *Absolute purchase.*] Of this term, — to render it clear of ambiguity and obscurity, — in the eyes of parties, if *lay-gents*, not to speak of lawyers, — *fixation* and *explanation*, — authoritative, appropriate, and adequate — would be altogether needful. Nowhere at present is any such explanation to be found. No otherwise can it be brought into existence than by a code. Supposing it thus brought into existence, reference to the text of the code is among the references which would require to be made from, and inserted in, the draught. As for *judge-made*, alias *common law*, — it *fixes* nothing; it keeps everything *afloat*: it *explains* nothing; it keeps every thing involved in clouds: it is a tissue of self-contradictions: a sage of the law gives no clear view of anything: *nemo dat quod non habet*; at the head of them sits and rules a judge, who — (as everybody knows) — knows less than any of them how to do what he is employed to do — to decide, — and knows not how to do anything but the reverse of what he is employed to do — anything but how to raise and introduce, instead of dispelling and excluding, *doubts*.

[e] *Sell.*] By this one word *sell*, reference is made to two distinct topics: 1. *The quantity of interest* disposed of; 2. The absence or presence of an *equivalent*: only in so far as regards the quantity of interest, does this topic coincide with that to which reference is made by the words *purchase of the absolute property*, as per note [b]: — benefit of transmission, to successors determined by the choice of parties, included.

As to what concerns *equivalents*, — the transfer may be, as here, *with* and *for* an equivalent, or *without* one: if *with* and *for*, the equivalent may be either, as here, of *money* (call it in this case *pecuniary*) — or of money's worth, in any other shape (call it in this case, *quasi-pecuniary*): if *without* equivalent, — the transfer is *gratuitous*; the transaction may be termed a *gift*; the instrument a *deed of gift*.[*] *Grantor* is a term which — where the transfer is not gratuitous, but for money — our learned draughtsman, I observe, employs on several occasions. It has, however, the inconvenience of presenting to view the idea of *gratuitousness*. *Disposer*, a term having for its *conjugates* the verb *to dispose*, and the substantive *disposition* — a term in familiar use — would have the convenience of including the three transactions, *sale*, *mortgage*, *and marriage-settlement*. For a correlative to it, an obvious term is *disposee*: and this same termination *ee* is indeed used in the same sense in the word *mortgagee*, and in many other words. But, it has the disadvantage of presenting to view the *subject-matter disposed of*; in which case no *person* is, unless he has the misfortune of being a slave. Accordingly, if it depended on me to choose a word, — a word I would rather employ is *receptor*: *receiver* — the word already in use — having the disadvantage of presenting, exclusively, the idea of a person, whose interest in the subject-matter is only that of a *trustee*. In the case of an *immoveable* subject-matter of property, as here, — gratuitous transmission, as everybody sees, is not, by a great deal, so frequent as in the case of a *moveable*; obvious cause of the difference, the difference in respect of value. Nor yet (as everybody knows) is *gift* of an estate — absolutely without example. This, therefore, is a mode of *transfer*, or say *transmission*, for which also provision will require to be made. In the arrangements proper to be made in the code for the two cases, — one difference, there is, which is highly important, and not unobvious. In the case where an *equivalent* is received, — the eventual obligation designated by the word *warranty*, presents itself as being prescribed by established principles: not so, in the case where *no* equivalent is received. In both cases, this word *warranty* presents itself as an obligation, of which, — either in

[*] *Gift.*] — To obviate ambiguity, the use made of this word in the technical sense, should, in the Code, be abolished.

the draught or in the code, with reference to it from the draught,—express mention should be made: and of which it should accordingly be said, either that it *is*, or that it is *not*, intended to have place.

[c] *All that.*] As to the insufficiency and consequent inutility and redundancy of the necessarily incomplete particularization, of which these words form the commencement, —see above, in the observations as to all those deeds considered together.

[d] *Appurtenances.*] Appurtenances? No, not I: if I were Mr. Benedict Butler, no such things would I have. Needless, useless, and, unless inoperative, mischievous, —would be this word. Look at the books: the only definition of it you will find warranted is—anything, and everything which, in virtue of some other word in the deed, would pass without being mentioned in it: but if so, then to what use mention it? Not to Miss Campbell, not to Mr. Butler, no, not even to Squire Allen—would information in any shape be presented by it: nothing better than appalment and perplexity. Not that imagination could present them with anything like the uncertainty and consequent mischief it is pregnant with. Look for it in the books, though it were no further than Jacob's dictionary, you will find that *outhouses* are appurtenances to *messuages*; *messuages* to *messuages*, not. *Orchards* and *gardens* are appurtenant to *messuages*; *lands*, not: whereby you will learn that orchards and gardens are not *lands*. See now one effect of it in these same *formulæ*. In this same deed of sale, mention is made of it; in the mortgage deed, in the family settlement, not. A tyro conveyancer—what might not his sagacity infer from this? that, in the case of a sale, *appurtenances*, whatever they were, would *not* pass without express mention made of them; in the two other cases, yes; a tolerably good sample this of the effects of *surplusage*. If, to any mind, this word presents any idea more definite than the above, it must be *that*, for giving expression to which, our author employs the Rome-bred law-word, *servitude*—mention of which may require to be made further on.

[b] *Annext.*] This word is here inserted, as having (obviously by error of the press) been, or the equivalent of it, omitted *out of the letter press.*

INSTRUCTIONS FOR FILLING UP THE BLANKS IN REVIEWER'S DRAUGHT.

[a] *Seller's name.*] Write all names at length: christian names if more than one, as well as surname or surnames. In the case of a non-christian, (Jew, or Mahometan, for example) the equivalent, if any, to the christian name, will be included.

If more than one join in the sale, their names will be written, beginning with that surname which, in the order of the alphabet, stands first.

[b] *Seller's condition.*] In case of *dignity*, insert the title; of titles more than one, the highest: in the case of a *lord*, if a peer, the peer's name, with that of the peerage: in the case of a *bishop*, his name, with that of the bishoprick: in case of a *professional* man, his profession: in case of a *commercial* man, his business, as *manufacturer* (naming the subject-matter of manufacture,) *merchant*, *shop-keeper*, *tailor*, *shoe-maker*, *carpenter*, *smith*, &c.: in case of a man not following any *profit-seeking* occupation, say *esquire* or *gentleman*.

In the case of a female—if never married, say, in the old accustomed form, *spinster*: adding the dignity, if any, or the profit-seeking occupation, if any: *single woman* will not serve, as not including females under age, and as not distinguishing married females from widows. In case of a married woman—concurring, for example, with her husband in the sale,—mention her maiden name, then her husband's, as directed in note [a], and his condition as to occupation, as per note [b].

[c] *Seller's habitation.*] If there be no fixed habitation, write the word *none*. If there be a habitation, express it as in letters brought from the General Post-office. If the habitation be *not* in a town, insert the name of the county and that of the parish: if *in* a town, insert, between the name of the county and the name of the parish, the name of the town. If there be fixed habitations in places more than one, insert them all. Add in every case either *householder* or *inmate*.

[d] *Subject-matter . . . . it's species.*] For instance, where integral, and uncompounded, say *a piece of land*, *cultivated* or *not cultivated*, or *a dwelling-house*, or *another building*, as the case may be: when integral, and compounded, of a dwelling-house (with or without outhouse and garden respectively,) with cultivated land, say *house with land annexed*, or *farm*, as the case may be: if the subject-matter be a fractional right, as a right of *mine-working* under land which belongs to a different proprietor—or right of *fishing*, or right of *drawing water* from a mass, current or stagnate—or share in the tolls of a *road* or *canal*—mention it accordingly. If subject-matters more than one are included in this deed, mention them accordingly.

[e] *Purchase money.*] For certainty, write the sum at full length in words; adding it, for facility of conception, in figures. If in whole or in part, the equivalent transferred consists of specific subject-matters of property, moveable or unmoveable, one or more, —a *ship* (for instance,) a piece of *jewellery*, or another piece of land,—mention them.

[f] *In his hand-writing.*] If able to write, the person writes it, as above directed; if not, he makes with his pen and ink the mark of a cross +; after, and close to it, some other person writes the name, adding the word *witness* with his own name, written as directed in note [a]. In the case of a person of the female sex, a line is to be drawn through the word *his*, and the word *her* written over it.

[g] *Day.*] The year, month, and day of the month: first in words; then in figures. Properest writer in each case, the seller or purchaser himself. For greater certainty, the day of the *week* may be added. If (as may happen by mistake) the day of the month and that of the week do not agree, the day of the week will be most likely to be rightly supposed; the days in a week being, in comparison of those in a month, so much fewer.

[h] *Place.*] Designate the place as directed in note [c].

NOTES TO REVIEWER'S DRAUGHT.

[i] *Agreement.*] This accordingly will, in general, in respect of the payment of the money, be also the day, and the place, the place of performance; and on this account, to avoid carrying the form of the draught to an inconvenient length, the circumstances which here follow are not inserted in the list of topics. But, in possibility, they are susceptible of diversification without limit; and in practice they are accordingly diversified. To prevent mis-statement, with the falsehood involved in it, — the attention is therefore, in the proposed additional Nos. drawn to them, that appropriate provision may be made in the code. In the present practice, falsehood is an instrument ever at hand for the solution of all difficulties: by the practitioner, employment is given to it; by the judge, the desired effect. Here follow the numbers.

No.
16. Day or days in which the purchase money was made over.
17. Place or places, at which the money was at the respective times made over.
18. Person or persons, by whose hands respectively the money was made over.
19. Day or days, on which the purchase money was received.
20. Place or places, at which the money was at the respective times received.
21. Person or persons, by whose hands respectively the money was received.
22. Form or forms, in which the money was made over.

An additional topic this last, under which, as a preservative against fraud, particularization may have its use. In case of paper money at a discount, as in the instance of *currency* in a distant dependency, — without this particularization, in conjunction with that of the *time of payment*, the real value of the alleged equivalent will not be discernible. As to the word *sterling*, if there be any need of it or use in it, it will be for the purpose of distinguishing metallic money from currency as above. As for pounds Scots, there being no such money either in metal or paper, no actual payment can be made in it.

Note that, on every occasion, on which the money is sent by a public conveyance, the times of receipt may be different from the times of payment. So, when sent by a private hand.

II. Deed of Mortgage.[1]

Author's Draught, *(No Top ics given.)*

"*Proposed Charge of a principal Sum with Interest.*

"This deed made *the* 1*st day of April* 1927, Between *Andrew Allen of* of the one, *and Benedict Butler, of* of the other part, witnesseth, that, in consideration of *five hundred pounds sterling* by the said B. Butler to the said A. Allen, now lent and paid, the said *A. Allen* doth charge all that Messuage or Dwelling-house, with the outhouses and gardens thereto belonging; also the three following parcels of land thereto adjoining and therewith occupied, namely, Blackacre, being meadow, containing ten acres; Greenacre, being pasture, containing four acres two roods; and Whitacre, being arable,

II. Deed of Mortgage.

Allen *to* Butler, *anno* 1927.

Reviewer's Draught *(with Topics.)*

N
I. *Parties Described.*
1. Pledger's name. *Andrew Allen.*
2. Pledger's condition. *Esquire.*
3. Pledger's habitation. County, *Shropshire*; Parish, *Weston*; Spot, *Allen Hall.*
4. Lender's name. *Benedict Butler.*
5. Lender's condition. *Butcher.*
6. Lender's habitation. County, *Shropshire*; Parish, *Weston.*

II. *Subject-matter Described.*
7. Subject-matter of pledge — its species. *A Farm.*
8. Subject-matter of pledge — its individual description. See Paper of Particulars hereto annext, marked A, and signed by the parties.

III. *Sum Lent.*
9. Sum of money lent. *Five hundred pounds.*
10. Species of money in which paid. *Promissory notes of the Bank of Scotland.*

containing eight acres; All which said premises are situate in the parish of *Stoke*, in the county of *Hereford*, and are now in the occupation of Giles Hall, with the appurtenances thereto belonging, *with the* payment to the said B. Butler, of the sum of *five hundred pounds*, with interest at *four* per cent. per annum, as follows, viz. *half a year's interest* of the same sum to be paid on the 1*st* day *of October*, now *next* ensuing, and the said *principal* sum of five hundred pounds *and* another half year's interest,[2] for the same to be paid on the 1*st* day of *April*, which will be in the year 1928."

No. IV. *Rate of Interest.*

11. Rate of interest. *Four pounds per year.*

V. *Times for Payment.*

12. Day, for re-payment of principal, unless respited, *April first* 1929.

13. Days, for half-yearly payments of interest. *October first* 1928; April first, 1929: so on, till repayment of principal.

VI. *Time, Place, and Tokens of Agreement.*

14. Pledger's name in his hand-writing, in token of agreement, and receipt of the money. *Andrew Allen.*

15. Day, on which pledger's name was written. *April first* 1927.

16. Place, in which pledger's name was written. *Pledger's House, Allen Hall,* Weston, *aforesaid.*

17. Lender's name in his hand-writing, in token of agreement. *Benedict Butler.*

18. Day, on which lender's name was written. *April first* 1927.

19. Place, in which lender's name was written. *Pledger's House, Allen Hall,* Weston, *aforesaid.*

NOTES ON AUTHOR'S DRAUGHT.

[1] *Mortgage.*] *Mortgage* is the denomination, by which, for the present purpose, I designate this sort of deed: this being the most important and obvious *species* of the *genus* for the designation of which our learned author has employed the word *charge*. Preferable however to *mortgage* — preferable in every point of view, and to a most important effect — would be *land-pledge*. *Mortgage* is understood by nobody; *land-pledge* would be understood by everybody; by everybody, male and female, who has ever seen or heard what passes at a *pawnbroker's*. So much for name.

Behold now how much may depend upon a right name: behold the instruction that may be afforded by it. Give validity and currency to either of these forms — the author's or the reviewer's, — and there will be no more need of equity suits, nor any more need of delay, where *land* is the pledge, than where a pair of ear-rings, worth the same money, or a tablespoon, is the pledge: and the present licensed depredation — in some circumstances, on the part of the lender, in others on the part of the borrower, — is at an end. What is it that should make the difference? Is not a sheet of paper as easily passed from hand to hand as a pair of ear-rings? As to difference, if any there be, it is all of it in favour of the *immoveable* pledge; for, the jewels may be run off with; the land can not. Secresy — in regard to *rents* — is *that* an object? for example, on the borrower's account, lest the state of his finances should be made known. More effectually can that be provided for in the case of the land, than in the case of the diamonds: the receiver of the rents, whoever he is, being supposed an object of confidence on both sides, the transfer is made to *him*: made to him, in trust, in case of payment on the appointed day, to deliver the money, or the land to the one party; in case of non-payment, to the other. Here, too, as far as regards the *principal*, all danger vanishes: trustee can no more run away with the land, than borrower or lender could; and as to the *interest*, it is no more than what every man, who employs a steward, by so doing trusts him with.

Indulgence to debtors — is *that* an object? How much better could it not be afforded, how much likelier would it not be to be afforded—by a creditor who had *no* law-charges to apprehend, than by one who *has* law-charges to apprehend — especially such as those which hang over his head at present?

Behold now the *extent* of the benefit which this theory, simple as it is, may be made productive of, if carried into practice: benefit to landlords in general; benefit to tenants in general; benefit to everybody, but to those who are among everybody's worst enemies, and who will be sufficiently known by that name. Where recovery of rents is the object, in so far as there is property enough of the tenant's, or anybody else's upon the premises, — landlords — nor yet altogether without good reason — are by themselves trusted with the power of being themselves judges in their own cause. Well then — where recovery of possession is the object — pledges on the spot being wanting or insufficient — with how much less danger might they not be trusted with the power of being, to the effect in question, judges in the cause of others — meaning of course by others, those with whom they have no connexion? On this plan, in case of *appeal* — and in that case only — might those judicatories have cognizance, which at present have it *in the first instance*. Of the essentially and incurably corrupt, and, in every respect, unapt judicatory in question, my opinion is the same as that of the *Morning Chronicle:* but, so long as the people continue oppressed with it, I

see much less danger from *this* power in its hand, than from most of that which is at present exercised by it.

As to the *species* of conveyances to which this system would be applicable, — the same principles which would give simplicity to *deeds* of sale, mortgage and settlement, would give correspondent simplicity to *leases*.

Turn now to the *gaming-table*. On a visit to it, — why, in that case, should not a noble lord, or honourable gentleman, put into his pocket a few papers of *sales*, *mortgages*, or *leases*, as well as the correspondent number of *rouleaus*? This is not a mere jest: for, if ruined, why might he not be so, — for the benefit of a set of companions of his own choice, with whom he was living on convivial terms, and in regard to whom, in conjunction with the chance of being ruined by them, he possessed an equal chance of enriching himself by their ruin, and from whom he might receive more or less of indulgence, why not as well for their benefit alone, as partly for their benefit, partly for the benefit of a set of lawyers whom he knows nothing of, — from whom nothing is to be got, — and from whom, on his part, nothing but ruin, or a more or less near approach towards it, can be expected?

Lawyers, by whom, comparatively speaking, such facility has been left to *transfer*, in the case of *moveables*, — whence happens it that they have dealt on so opposite a footing by it in the case of *immoveables*? *Answer*, altogether simple. Society could not have held together, and the matter of legal plunderage would either never have come into existence, or, as fast as it had come, would have been swallowed up, — had they thus loaded it in the case of moveables; but, in the case of immoveables, the magnitude of the masses is such as renders it possible for them to bear the load. Sweet, accordingly, is the "*savour of the realty*," to learned noses.

[1] *Another half year's interest.*] But what, if that happens which most commonly does happen? What, if the loan is continued, as it sometimes is, for years by dozens, beyond the twelvemonth? For this case no provision is here made. [See notes on the Reviewer's Draught.] In any case, on failure of payment, prompt is the remedy needed; and next to instantaneous is the remedy which, as above, the nature of the case affords; yes, and which would be afforded in fact, if those judicatories, which are *law* and *equity* courts in name, were not *iniquity* courts, if not in purpose, in effect.

III. Marriage Settlement Deed.

Author's Draught. *(No Topics given.)*

"*A Marriage Settlement of Real Estate,*
"*under the Proposed Code.*[1]

"This Deed made *the First day of April* "1926, Between *Alfred Allen of* of "the one part, *and Clara Campbell of* "of the other part, Witnesseth that in consideration of a Marriage agreed upon and about "to be solemnized between the said *A. Allen,* "*and C. Campbell,* He the said *A. Allen,* doth "convey, charge, and settle, in the event of such "marriage taking effect, and from and after "the same, all and singular the Messuages, "Cottages, Farms, and Lands, situate in the "parish of *Waring,* in the county of *Lincoln,* "comprised in the Schedule, to these presents, "and therein particularly set forth by the "names, quantities, qualities, situations, "occupiers, and other circumstances necessary for the distinction thereof respectively, and all other, if any, the Messuages "and Lands of or belonging to him the "said A. Allen in the parish of Waring "aforesaid, with the appurtenances thereto "respectively belonging, and also all the impropriate tithes or tenths of corn, grain, "and hay, and other great tithes or tenths "whatsoever, and all moduses and other "compositions for tithes or tenths yearly "arising and payable from or in respect of "all and singular the aforesaid lands and "premises; to the person and persons respectively, *With the several yearly and prin-*

III. Marriage Settlement Deed, Allen *with* Campbell, *anno* 1929.

Reviewer's Draft *(with Topics.)*

No. **I.** *Parties Described.*

1. Intended husband's name. *Andrew Allen.*
2. Intended husband's condition. *Esquire.*
3. Intended husband's habitation. County, *Shropshire;* Parish, *Weston;* Spot, *Allen Hall.*
4. Intended wife's name. *Clara Campbell.*
5. Intended wife's condition. *Spinster.*
6. Intended wife's habitation. County, *Shropshire;* Parish, *Weston;* Spot, *Cross Street.*

II. *Subject-matter Described.*

7. Subject-matter of Settlement — its species. *Farms and Tithes.*
8. Subject-matter of Settlement — its individual description. See Paper of Particulars hereto annexed, marked A, and signed by the parties.

III. *Provision for intended Wife's Interest during the Marriage.*

9. During the Marriage, pin-money.[1] *Two Hundred Pounds per year.*
10. This provision is a rent charge, charged[2] upon the estate.
11. This rent charge is unalienable.[3]

IV. *Provision for intended Husband during his Life.*

12. Subject to this charge, the estate remains to *Andrew Allen* during his life.
13. He is not impeachable for waste.[4]

V. *Provision for intended Wife in case of Widowhood.*

14. On the death of intended husband, intended wife is to receive during life a jointure of *Five Hundred Pounds per year.*
15. This jointure is unalienable.
16. It is to be paid clear of all charges.
17. In consideration of it, she hereby gives up whatever provision she might otherwise have under the Code.[5]

"equal sums, and for the purposes following, viz. "the said premises to stand and be charged with "the clear yearly sum of two hundred pounds "sterling to be paid to the said Clara Campbell, "for her exclusive and inalienable enjoyment "during the said intended intermarriage, and "subject thereto, the premises to go to the said A. "Allen, during his life, without impeachment of "waste, and after his death, the said premises to "stand charged with the clear yearly sum of five "hundred pounds sterling, to be paid to the said "Clara Campbell during her life in lieu of her "legal interest in any lands to which the said A. "Allen shall die entitled, and subject thereto, the "said premises to stand and be charged with "the sum of five thousand pounds as a provision "for such child and children of the said intended "marriage (except an eldest or only son, for "the time being, entitled either absolutely "or presumptively under the limitations "next ensuing) and to vest and become payable "at and in such time, or times and manner as "hereinafter mentioned; and subject as aforesaid "the said premises to go To such son of the said "A. Allen, by the said C. Campbell, as shall "first or alone attain the age of twenty-one years, "or dying under that age shall leave issue of his "body living or conceived at his death, and if "there shall be no such son, then to all and every "the daughter or daughters of the said A. Allen, "by the said C. Campbell, who shall attain the "age of twenty-one years, or dying under that "age shall leave issue of her or their body or re-"spective bodies, living at her or their death or "respective deaths, in equal shares if more than "one, and if there be but one such daughter, then "the whole of the premises to that daughter. And "if there shall be no child of the said intended "marriage, who shall become absolutely entitled "to the premises under the limitations aforesaid, "then the said premises to go and revert to the "said A. Allen. And as to the said sum of "five thousand pounds hereinbefore charged for "the benefit of such child or children of the said "intended marriage (not being an eldest or "only son for the time being entitled either "absolutely or presumptively as aforesaid) "as hereinafter mentioned. It is hereby de-"clared that the same sum shall vest in and be-"come payable to such child or children (except "as aforesaid[a],) or else in any one or more "exclusively of the other or others of them at such "age or time or respective ages or times, in such "manner and with such dispositions over, to, or "for the benefit of the other or others of the same "children or any of them, as the said A. Allen "shall at any time or times after the said in-"tended marriage direct or appoint,

"And for want of such direction or appointment, "or so far as the same, if incomplete, may not "extend, the said charge, or the unappointed part "thereof, shall vest in and go to all and every the "children and child of the said intended mar-"riage (other than an eldest or only son for "the time being entitled as aforesaid) who "shall attain the age of twenty-one years, or in "the instance of a daughter or daughters shall

VI. *Provision as to Descendants who, subject to this jointure, are to become Heirs to the Estate: say* the Estate-takers.

No. Cases in which the Estate descends undivided.

18. Case 1. At the father's death, a son alive: no nephew or niece of his, by any elder brother of his, alive: sisters or younger brothers of his alive or not in any number. To this son the estate passes undivided.

19. Case 2. At the father's death, a daughter alive; no brother or sister of her's alive, nor any nephew or niece of her's, by any brother or sister of her's. To this daughter the estate passes undivided.

20. Case 3. A son alive, daughters or younger sons alive or not: nephews or nieces of the son by an elder brother of his, alive in any number. To the eldest of these nephews, — or, if there be but one, to the only nephew; or, if no nephew, to the niece, if but one, the estate passes undivided.

Cases in which the Estate descends divided.

21. Case 4. No son alive: nor son, or daughter, by any son. Daughters, in any number more than one, alive. To these daughters the estate passes in equal shares.

22. Case 5. No son alive: a daughter or daughters alive: by a deceased sister of theirs, one niece of theirs alive. To the daughter or these daughters, with their niece, the estate passes in equal shares.

23. Case 6. No son alive: a daughter or daughters alive: by a deceased sister of theirs, nieces two or more alive. Among the daughters and their nieces, the estate passes divided. But the shares of the daughters are, as above, equal as between each other: so are those of the nieces. But the nieces, in whatever number by one sister, take among them no other share than that which would have been their sister's had she been alive: so, if daughters more than one are all deceased, each leaving a daughter or daughters.

24. Case 7, &c. Upon the same plan, the estate will be divided through any number of generations: the share of each mother passing entire to her daughter, if but one; in equal shares among her daughters, if more than one: whatever be the number of her daughters, to her son, if but one; if sons, more than one, to the eldest.

VII. *Money Provision, for Children not taking part in the Estate: say* the Money-takers. *Apportioner, the father. In this provision, no child, having part in the Estate, has any part. Having the whole includes the having a part.*

25. Sum total at his disposal, *Five Thousand Pounds*, charged on the estate, as per No. 10.

26. Share of each, whatsoever he appoints: the whole, any part, or no part.[a]

27. By deed, he may bind himself to any such child or children, or to any person on behalf of any such child or children, to charge the estate with any sum not exceeding the total charge, as per No. 25.

28. So likewise by last will, in so far as is consistent with what he has done by deed.

29. No money, advanced, in his lifetime, to, or for the benefit of, any such child, whether in the way of income, or in the way of capital, — will, unless by deed expressly so declared to be, be understood to be designed to be deducted out of the apportionment made as per Nos. 26, 27, 28.

30. No charge, endeavoured to be made by him on the estate, will have effect till after this settlement charge, as per No. 25, has been carried into effect.

31. To the receipt of any share of the portion-money, he may annex all such conditions not prohibited by law, as he thinks fit.

32. *Maintenance.* For this purpose, upon the *principal* of any such child's portion he may pay, or direct to be paid, — to such child, or to any person on account of, such child, — *interest* at any rate mentioned by him, for any length of time up to full age or marriage; at which time the principal, or what remains of it, will be to be paid.

[a] How many hundred thousand pounds, spent in misery-making litigation, for the benefit of Judge and Co., would not a law to this effect, if enacted in time, have saved? Calculate from the cases alluded to by Mr. Humphreys.

" *marry under it, to be equally divided between* " *such children if more than one, and if there shall* " *be but one such child, then the whole of the said* " *unappointed charge to vest in and go to such one* " *child, and the same charge to be paid to such* " *children or child respectively, at the same ages,* " *or times, or age or time, if the same shall happen* " *after the death of the said A. Allen. But if* " *the same shall happen in his lifetime, then im-* " *mediately after his death,* provided always *that* " *after the death of the said A. Allen, and in case* " *he shall have made no direction to the contrary,* " *it shall be lawful for the guardian or guardians* " *of any infant child or children of the said in-* " *tended marriage presumptively entitled to a por-* " *tion or portions under the said charge, to levy* " *and raise any part or parts not exceeding in the* " *whole for any such child, a moiety of such his,* " *her, or their then eventful portion or portions,* " *although the same shall not then have become* " *vested, and to apply the money so to be raised* " *for the preferment, advancement, or benefit of* " *such child or children in such manner as such* " *guardian or guardians shall in their or his dis-* " *cretion think fit, provided also that after the* " *death of the said A. Allen, and in case he shall* " *have made no direction to the contrary, it shall* " *be lawful for any such guardian or guardians* " *as aforesaid, to levy and raise*[3] *and apply for* " *the maintenance and education of such child or* " *children for the time being of the said intended* " *marriage, as shall be presumptively entitled to* " *a portion or portions under the said charge, in* " *the mean time and until such his, her, or their* " *eventual portion or portions shall become vested,* " *such yearly sum or sums of money not exceeding* " *what the interest of the same portion or portions* " *would amount to at the rate of four pounds per* " *cent. per annum were he, she, or they then ab-* " *solutely entitled thereto.*"

33. For any payment, as per Nos. 26 or 32, he may assign any *time* he pleases.
34. Of the portion-money obtained under this settlement, — whatsoever part, if any, remains undisposed of by the father, is to be divided among the children, and the descendants, if any, of the children, in equal portions, after the several manners mentioned in Nos. 21, 22, 23, 24.

VIII. *Subject to father's direction, powers to Guardian of children not having part in the estate.*

35. Out of the principal, he may employ, for the benefit of any such child in the way of *advancement*, any sum not exceeding the half of his or her portion.
36. So yearly for *maintenance (education* included) any sum not exceeding interest at four per cent. upon the principal.
37. On the death of any such child before full age or marriage, — his or her portion, whatsoever part of it remains not disposed of, as per Nos. 35, 36, is to be paid to the surviving child, if one; to the surviving children, in equal portions, if more than one. Hence, before arrival at full age or marriage, the portion of any child may, by his or her own death, have been extinguished altogether, or by the death of others, augmented. But, in the allotments made of *advancement*-money, as per No. 35, neither of those contingencies is to be taken into account. The sum employable at all times for the benefit of each child, in both ways, is the whole, or the remainder, of the sum belonging to him or her on the day of the father's decease.[6]
38. For the times of payment in the several cases, and the mode of giving execution and effect to the several provisions, see the Code.
39. If, at intended husband's decease there be no child, or descendant of any child, alive, — the estate, subject to widow's jointure, as per No. 14, is at his disposal, and falling such disposal, passes to his heirs.[7]
40. Intended husband's name, in his handwriting, in token of agreement. *Andrew Allen.*
41. Day, on which intended husband's name was written. *May first*, 1929.
42. Place, in which intended husband's name was written. *Weston, Shropshire.*
43. Intended wife's name, in her handwriting, in token of agreement. *Clara Campbell.*
44. Day, on which intended wife's name was written. *May first*, 1929.
45. Place, in which intended wife's name was written. *Weston, Shropshire.*[8]

NOTES ON AUTHOR'S DRAUGHT.

[1] *Proposed Code.*] Matter, which, for reasons above mentioned, namely, in the observations on the three draughts taken together, is regarded as superfluous,—is, for distinction's sake, here printed in black-letter. Owing, however, to the want of correspondency between the plan of the Author's and that of the Reviewer's draught, — a considerable quantity of matter, regarded as superfluous, is left undistinguished; as not being, without explanation, capable of being disentangled from needful matter. This, however, may, by any person to whom the restriction presents itself as being worth the trouble, be seen by a comparison between the two draughts.

[2] *Except as aforesaid.*] Three times the same exception — each, all three times, imbedded in the same sentence, and a different set of words employed each time for the expression of it. In the Reviewer's draught, this and every other instance of involvement is avoided. In his form of locution, an article, out of which an exception is taken, opens with the words, "*Exceptions excepted;*" and in the next article, next to the words "*Exceptions are as follow,*" or "*Exceptions are the following,*" come the exceptions one after another, each for distinction preceded by a numerical figure. See *Official Aptitude Maximized: Expense Minimized.* On this, as on every such occasion, never is Mrs. Allen (late Miss Campbell,) with her misfortune, in not having had the benefit of Mr. Peel's lawyer-making dinners, out of his sight.

[3] *Levy and raise.*] Doubts and solutions, the same in this case as in that of Mortgage; which see. If in *this* case both these correlative expressions are necessary, not less so were they in *that.*

NOTES ON REVIEWER'S DRAUGHT.

[1] *Pin-money.*] This word, and the succeeding word, *jointure*, are in the same case. Being the words in common use, and sure of being familiar to every person who is likely to be-

come a party in a conveyance of the sort in question; — here, in a deed of which it so highly imports them to possess, on every occasion, an adequate conception, — here is a perfectly good reason why these terms *should* be employed; nor is there any why they should *not*. As to *pin-money*, — nobody, at the sight of this word, is in any danger of supposing, that the whole £200 a-year is to be laid out in *pins;* any more than, at the sight of the word *spinster*, anybody would suppose that the whole life of the lady had been occupied in *spinning*.

[2] *A rent charge.*] On this occasion, a question or two the reviewer cannot avoid putting, in behalf of the future Mrs. Allen.

1. This same rent charge — from what *day* is it to be computed? — from the day of her unhappy loss? — from the quarter-day next before it, or from the quarter-day next after it?

2. By whose *hands* is it to be paid? — on failure of payment, what is it that, to save herself from starving at the end of a few days, she is to do? At the end of a few years or so, Eldon and Co. are ready, in the way that everybody knows, to supply her necessities, provided always that she has — what by the supposition she has not — money enough to satisfy their cravings, as per note on the Mortgage-Deed. Here then comes another demand for prompt judicature: for prompt *judicature*, even though it were not to end in *justice*.

To *some* of these questions, answer is given in the Author's Code, p. 262; reference to which is made for the present purpose, in a note to the Settlement Deed, p. 399. Not, however, to all; nor, in and from the Deed, is reference made to the document, to wit, the Code, in which an answer to them may be found. In the Reviewer's Draught, a supply, for this deficiency in the Deed, is provided; to wit, by reference made to the Code.

[3] *Inalienable.*] What does it mean? what ought it to mean? Inalienable to all purposes whatsoever, or with the exception of certain purposes? If with exceptions, — (1) Inalienable for joint benefit by joint consent? (2) Inalienable for husband's benefit with wife's consent? (3) Inalienable for wife's own benefit, at wife's desire? (4) Inalienable for children's benefit, on joint desire, at (5) husband's desire, at (6) wife's desire, as above? (7) Inalienable at suit of creditors for payment of debts, contracted by husband or by wife? — Matters all these, presenting the same demand for discussion and decision somewhere, but against all which the Author's *draught* shuts the door, by the all-comprehensive word *inalienable*. In the Code, by article 22, under the security for freedom afforded by the wife's secret examination, he allows the alienation of the whole of the subsistence provided for her by general law during widowhood; also, of any property derived by her during marriage from the bounty of a third person. But, is not the danger to her from fraud or improvident alienation incomparably less, in the case of *pin-money*, than in the case of *jointure?* — in the case where superfluities alone are at stake, with her husband's property as a resource for necessaries, than in the case where necessaries are at stake, and that resource is at an end?

Supposing, for any purpose, alienation *with her free consent*, allowed, — in that case, for giving the allowance, the words *without her free consent* would suffice; but, for particulars, in that case, as in so many others, reference should be made from the Deed to the Code.

Rendering this pin-money — rendering the estate itself, alienable for any one or every one of these purposes — would this render the provision ineffectual altogether? Not it, indeed: any more than establishing a general course of succession by law, failing ditto by deed or will, renders the power of transfer by deed or will ineffectual.

Now, as to alienation for payment of *debts*. Render the property inalienable altogether, you leave, exposed to the risk of disappointment by loss, one set of persons: render it alienable to this or that purpose, you leave, in like manner, exposed to the risk of disappointment by loss, another set of persons. *Query:* In which case is the evil greatest?

Answer: Render it *inalienable* altogether, to the number of persons thus exposed, there is no limit: for, all persons who, in the capacity of workmen, for example, or petty traders, have dealings with the parties, are included in it; and among them there may be those, in whose instance, owing to difference in respect of income, the same nominal loss may be productive of a dozen, a score, a hundred, a thousand times the suffering produced in the instance of the parties to the marriage.

Render it *alienable* for the benefit of creditors, — the suffering is confined to the sometimes indeed blameless, and merely unfortunate, but most commonly imprudent, and thence culpable, parties; with the eventual addition of their children, whom, as well as themselves, they had it in such case in their power, by ordinary prudence, to have secured against such loss.

For other landed property of the same kind — for other landed property of a different kind — for property in any other shape — (government annuities, for example, or life-assurance company annuities,) — it may happen that, to the benefit of the parties, to an unlimited amount, an *exchange* might be made. Under a rational system of procedure, with a correspondent judiciary establishment, — all parties interested, whether on self-regarding account, or on account of sympathy

towards the parties, being allowed to intervene, — exchanges of all sorts might, for these purposes, be made, by any sets of persons, with little or no expense. Even at present, they are not unfrequently made. Yes; but by what authority? — in what way? Instead of judicial authority, in the appropriate and apt way, by legislative authority, in an anomalous and unapt way: and at an *expense* which not one person out of several thousands is able to defray. And why thus made? Only that a set of placemen and lawyers may, on each occasion, share among them so many hundreds of pounds.

But, the beings who have as yet no existence — the children's children, one set after another, down to the world's end — these are the dear possible creatures, by whom, to the exclusion of so many existing and suffering ones, whatever sympathy has place in an aristocratical bosom, is engrossed: nor yet the whole number, but that half of it alone, whose merit and title will have consisted in the having received, from the hand of positive and ungrounded law, the *name* of their supposed male, in preference to that of their female, and thence more certain, progenitors; and it is for these same possible, that actually existing human beings, in unlimited number, are to be cheated, and to an unlimited amount made sufferers.

If, during the existence of a form of government by which the interest of all besides is sacrificed to the assumed conjunct interest of the one and the few, — it be on any account advisable to provide leading-strings to check aristocrats, in their individual capacity, in their propensity to run into ruin, the recent French institution of *majorats* would, perhaps, be the best adapted to the purpose: always understood, that in England it be confined to *peerages*.

In this case, for the preservation — not, indeed, of the spendthrifts themselves from ruining themselves, but of their relatives from suffering disappointments from them, — inalienability would be the sole and tolerably efficient remedy. But, for preservation of all persons besides from being cheated and made sufferers by them, — *registration* (of which presently) would be an indispensable, and the sole remedy, though unhappily, as will be seen, never more than an imperfect one.

[4] *Without impeachment of waste.*] An odious locution this — relic of antique barbarism, altogether unfit for any honest purpose. In respect of morality, what a lesson! Mischief under its own name expresly authorized by law! By this expression, when made use of, what is it that is really intended? That the estate should be wasted? No: only that, in a particular shape, a fair profit, adapted to the nature of that shape, should be reaped from it. The profit thus intended — what is it? — profit from the sale of timber growing on the estate? This, then, is what should be said; — more demand here for reference to an appropriate section in the appropriate code; a section having for its object, the confining within limits beneficial to all interests concerned, the profit derivable from this source. Is any other fractional right intended to be reserved out of the aggregate right of ownership? If so, in conjunction with the right of cutting and selling timber, it should be designated by some adequately-comprehensive locution, such, for instance, as *lifeholder's profit in the shape of capital*; with reference, for explanation, to the codes.

In the Equity books, to the head of waste, under the sub-head *permissive* waste for contradistinction from *positive*, is referred *omission to* keep in repair. Under its ordinary and specific name, in speaking of the correspondent obligation, mention should be made of it in the code, and referred to in the deed. Under both heads, matter proper for the code will be found in those same books.

[5] *Gives up.*] More demand for reference to the appropriate Code. The arrangement which Mr. Humphreys, and with incontestible reason, proposes is, — that, in the Code, — to *dower*, with its uncertainties, be substituted — a provision as clear as may be of uncertainties. This supposed done, — thereupon will come a clause, giving legality to whatever arrangement may, in relation to this provision, be made in a marriage-settlement; for it is not for the legislator, to whom all individuals are alike unknown — it is not for him, on any such occasion, to take upon himself to force upon them an arrangement which does not suit the purpose of the only individuals interested. So far as their interests are alone concerned, and laying out of the question whatever interest the public at large may have in the matter, — what belongs to him is neither more nor less than to provide against *fraud*, *accident*, and on their part *inadvertence*: and, for these purposes alone, to establish such all-comprehensive arrangement as presents a prospect of being well adapted in a greater number of instances than any other all-comprehensive arrangement that the case admits of. But, this supposed done, — here, in the tenor of the code, would come the necessity of a subsidiary arrangement, having for its object the securing to the *widow*, at all events, and at every point of time, one or other of the two alternative provisions: to wit, *that* under the general rule, and *that* under the particular rule agreed upon and laid down in the settlement. Employ the *summary* plan, as per the note to the Mortgage Deed, this security is established: deny it, you deny justice, and leave the afflicted female in the condition expressed by the proverb of the *two stools*.

[6] *Father's decease.*] When arrived at this point, not inconsiderable (it cannot but be acknowledged) would of course be the perplexity of Miss Campbell, if she regarded herself as being under the obligation of obtaining any particular as well as clear conception of the contents. But to no such painful obligation will the lady regard herself as subjected: — so small will be the probability, — and at any rate so great the distance, — of such a state of things, to an imagination occupied by the idea of near-approaching happiness: and, should the desire ever come upon her, of seeing — in what way, in any proposed state of things, the division may come to be made — (a desire not likely to arise till she has marriageable children,) there, in one of her drawers, lie the means of satisfying it.

Miss Campbell throughout — Miss Campbell is the chief object of my care. And why? Even because — whatsoever is either not understood or misunderstood, is in proportion mischievous; mischievous, in the joint proportion of the importance of the matter, and the number of persons interested, from whose minds the true import is in either way excluded. For, from non-understoodness or misunderstoodness comes oppositeness to expectation; from oppositeness to expectation, disappointment; from disappointment, suffering, in proportion to the importance of the consequences.

[7] *Heirs.*] HEIRS (*coheiresses* included.) Inserted here of necessity, and in want of a better, is this word, which none but lawyers can understand; better a word such as *successors*, which those, whose property is at their disposal, may understand. That which, for this and all other occasions, is wanted, is — a term which shall apply to property at large, whichsoever be the *subject-matter* — to wit, *immoveable* or *moveable* — or (what in law-jargon comes nearest to that expression) say *real* or *personal*; to which will require to be added *incorporeal*; so, whichsoever be the mode of derivation from such its source: to wit, whether simple and immediate, as in the case of *genealogical* succession, or unimmediate, and with the intervention of individual will, as in the case of *transfer*, whether by *deed* or *last will*; a desideratum this, which may and should be provided for us, instead of our being sent for a meaning to the obscure history of a barbarous state of society, altogether different from the present. This desirable term is presented by the word *successors*: this, then, if found apt for the purpose, is the word that will naturally be employed, should ever a rule of action be provided, which it is intended that those whose actions are to be determined by it should have the possibility of understanding. On the present occasion, the distinction might, in that case, be expressed by some such words as *land-taking successors* and *money-taking successors*. *Heirs* should, in that case, be, in all its applications, eliminated out of the code, and abandoned to the society of antiquaries.

As to lawyers, — as, in respect of honour as well as profit, it is their interest, so of course is it their desire and endeavour, that the rule of action, more especially in matters of property, be understood by as few, and to that end be as unintelligible, as possible. As for what the rest of the community suffer from this state of things, this is what scarce one in a thousand ever thinks about. As it is with wolves, so is it with lawyers; what sympathy they have, if any, it is sympathy for their own kind, all of it; for their prey, none of it.

Thence comes, in the arrangements themselves, that complicatedness, by which so much complicatedness in the expression given to them is necessitated. Complicated is the description of those persons who, separately or collectively, are to be in the possession of the estate. Correspondently complicated accordingly is the description of those who are not to have any part in the estate. What simplicity of description there is in the case is confined to this, namely, that whoever has the whole of, or any part in, the estate, has not any part in the money; and that whoever has the whole of or any part in the money, has not, at that same time, the whole of, or any part in the estate, unless by the death of some anterior taker of it.

[8] *Weston, Shropshire.*] Between wordiness and sufficiency some difference, it is hoped, will now have been seen exemplified: — every superfluous word is an additional cloud. Of wordiness, in the degree in which it is exemplified by English law practice, so far from sufficiency, deficiency is the result. For, when on this or that occasion, such is the quantity of the heap of particulars inserted, that the draughtsman is not able to bear the whole list continually in mind, the consequence is, — that on this or that other occasion, though exactly parallel to it, and calling for exactly the same list, — some of them are omitted, or others added or substituted: whereupon, in argument, the difference, in legislative or professional expression, is, of course, made use of as a ground for difference in juticial decision. Of this sort of style, — expensiveness and uncertainty, with the profit from both, were the manifest *final causes*, and never were ends more abundantly accomplished.

Now as to *Registration*. Uses, as applied to instruments of conveyance and contract relating to property in immoveables, these —

1. Preservation of these documentary evidences from loss and destruction.

2. Preservation of them from falsification.

3. Exclusion of corresponding counterfeit documents.

4. In so far as the document is proof, of incumbrance applying to the property of the possessor of the estate, in relation to which the document registered operates as evidence of title, — affording, to all persons disposed to give him credit for money or money's worth, the means of guarding themselves against loss by insolvency on his part.

5. Affording, by means of the aggregate of the evidence thus preserved and rendered susceptible of appropriate publication, — information of the *statistical* kind, capable of being turned to account by government for the benefit of the public in a variety of ways.

Of these five good effects, — the first gives security to the owner of the estate, against accident; the second and third, against fraud and depredation, at his expense, on the part of the rest of mankind; the fourth, to the rest of mankind against fraud on *his* part; the fifth contributes to form a basis for the exercise of the legislative and administrative functions.

Alive to the importance of this means of security,—Mr. Humphreys, taking it up upon its present footing, affords for the improvement of it a quantity of highly valuable matter, as to which I must content myself with referring the reader to his work. I promised him *a treat;* I now fulfil that promise; such if it be to him, such will the invention I have to present to view be to every reader, in proportion as in his eyes security, to a degree beyond everything that as yet has been experienced, or can have been so much as anticipated, is an object of regard. By it, if narrow and sinister interest in powerful breasts can but be induced to permit the employment of it — by it, will preservation and appropriate publication be given to documentary evidence, to whatever purpose needed: preservation, and what is of correspondent importance, equally unexampled cheapness. It is an invention of which I can speak my admiration the more freely, as not having in my own person any part in it.

For the description of it, and in a more particular manner, of its uses,—I have but to transcribe a passage of an about-to-be published proposed Constitutional Code, ch. viii. PRIME MINISTER, § 10, *Registration System.*

"Art. 1. For the more commodious, correct, prompt, uniform, and all-comprehensive performance, of the process and function of registration in all the several departments and sub-departments — as likewise on the part of the Prime Minister, for the correspondent receipt by him of all documents, the receipt, and, as occasion calls, the perusal of which may be necessary to the most apt exercise of the several functions belonging to his own office — he will, as soon as may be, cause to be established, and employed in practice, in the several offices of the several departments and their sub-departments, the sub-legislative included, the mode of writing styled the *manifold* mode."*

"Art. 2. Particular uses of the manifold mode of writing are as follows:—

By the multitude of exemplars, produced at an expense which, with the exception of that of the paper, is less than the expense of

* "MANIFOLD WRITING. — 1. *Mode of Execution.*

"In the *manifold way*, the mode of writing is as follows: —

"Instead of a pen, a style of the hardest and strongest metal, without ink, is employed. Under the style, as under a pen, are laid, one under another, in number the same as that of the exemplars required, sheets of appropriate thin *paper*, alternating with the correspondent number of thin sheets of *silk*, into each of which has been worked all over some of the black matter used in printing, and called *printer's ink*. In this way, by one and the same course taken, at one and the same time by the style, may exemplars be produced, in any number not exceeding twelve, with not much more expense of time and labour, than is commonly employed in the production of a single exemplar by pen and ink. Eight exemplars at once, all of them perfectly legible, have thus been habitually produced. In London this mode of writing has for about twenty years been regularly applied to the purpose of conveying simultaneous information to a number of newspapers. To other purposes it has also been employed under the eye of the author of this work.

"For the performance of the operation, the stronger the hand the better.

"To perform in perfection requires some practice in addition to that which has been applied to the art of writing with pen and ink.

"If there be a difference in the exemplars, that which is furthest from the style, not that which is the nearest, gives the most perfect and clearest impression.

"*Silk*, when a good deal worn, answers much better than when new.

"Supposing this mode of writing employed to any considerable extent, the silk would require to be smoothed by some appropriate means; for example, by being passed through rollers.

"The *thinner* the silk the better. That which has been mostly employed is that which, in English, is called *sarsenet*.

"As to the paper, that which is at present employed is called fine single crown tissue paper: price 19*s.* 6*d.* per bundle, containing two reams.

"In strength, by reason of its thinness, it cannot be expected to be altogether equal to what is most commonly in use in England; nor in whiteness, nor thence in respect of beauty and legibility are all the exemplars, by reason of the oil, which is an indispensable ingredient. They are nevertheless perfectly apt for these its intended purposes. No more than half of the number wanted need be, or ought to be taken on the oiled paper; to wit, every other one; the paper of the others will remain in primitive whiteness, except a slight extravasation of the oil of the ink round the edges of the letters. The effect might even be produced by a single oiled paper; to wit, the one to which the style is immediately applied. But in this case the labour necessary to produce the effect will be greater."

two in the ordinary mode it affords means for furnishing, at that small expense, to parties on both sides, for themselves and assistants, all such documents as they can stand in need of.

"Art. 3. Every exemplar being, to an iota, exactly and necessarily the same as every other, the expense of revision by skilled labour is thereby saved, as well as *unintentional aberration* rendered impossible.

"Art. 4. An exemplar, kept in the Registrar's office, will serve as a standard, whereby a security will be afforded against all *intentional* falsification, on the part of the possessor of any other exemplar.

"Art. 5. By the reduction thus effected in the expense of all judicial writings emanating from the judicatory, — the protection afforded by judication in its best form, — to wit, that which has for its ground orally elicited and immediately minuted evidence, — will be brought within the reach of a vast proportion of the whole number of the people, to whom it could not otherwise be afforded.

"Art. 6. A collateral benefit — a degree of security hitherto unexampled against *destruction* of judicial documents, by *calamity* or *delinquency* — may thus be afforded, by the lodging of exemplars in divers offices in which they would be requisite for other purposes: exemplars of documents from the immediate judicatories being, at the appellate judicatory, requisite for the exercise of its judicial functions; and, in the office of justice-minister, for the exercise of his *inspective* and *melioration-suggestive* functions.

"Art 7. To save the expense of custody, and prevent the useful from being drowned in the mass of useless matter, — the legislature will make arrangements for the periodical destruction or elimination of such as shall appear useless: care being at all times taken, for the preservation of all such as can continue to be of use, either eventually for a judicial purpose, or for the exercise of the *statistic* and *melioration-suggestive* functions, as per ch. ix. § 11, MINISTERS COLLECTIVELY: ch. xi. MINISTERS SEVERALLY, § 2, *Legislative Minister:* and ch. xii. JUDICIARY COLLECTIVELY, § 19, *Judge's contested-interpretation-reporting function:* § 20, *Judge's eventually-emendative function:* § 21, *Judge's sistitive or execution-staying function:* § 22, *Judge's pre-interpretative function:* § 23, *Judge's non-contestational-evidence-elicitative function.*"

Here, then, of every such conveyance, — without any addition to the expense, the trifling expense of the paper excepted, — we have no fewer than *eight* copies, and upon occasion as far as *twelve*, no one differing in a single tittle from any other; and this identity effected, without a particle of that skilled labour, the purchase of which, on the present plan, can never fail to be so seriously expensive. On this plan, unless it were for concealment of particulars, no need would there be for any such inadequate representative of the original, as that which, under the name of a *memorial*, is employed in present practice.

To each one of the parties, how numerous soever, an exemplar would be given of course. To obviate the case, — at present so pregnant, not only with delay, vexation, and expense, but even with loss of estate, for want of a producible title, — as many exemplars might be had by one party, as there were distinguishable parcels, which he might anticipate an occasion for making disposition of. So, when it happens that one estate, disposed of, the whole of it, by one and the same instrument, is situated in the territories of registration offices more than one, — so many of these offices, as there are, so many exemplars may there be. And finally, if, whether for ulterior security against accidents, or for all-comprehensive government purposes, it were found desirable that, for the whole territory of the state there should be one *general office*, in which an aggregate of the documents received into the several *local offices* should be kept — here, is an additional accommodation, that might be afforded with a comparatively inconsiderable addition to the expense.

For, the documents being thus distributed, every syllable of each would thus be made secure — not only against deperition by accidents, but against all possibility of falsification. For, suppose, for example, one of the parties dishonest, and disposed to commit this crime, what possibility of a successful issue could he contemplate? In his own exemplar he makes the requisite alteration: but what can it avail him, when, in case of the slightest degree of suspicion, there lie, in the custody of a public functionary, as well as in that of each of the several parties, so many exemplars, to which, for any such purpose as falsification, all access on his part is perfectly hopeless.

For the application of the registration system to the case of dispositions made of property, the appropriate course might be this: adequately-registered estates, all of them, to the extent allowed by law, secured against eventual as well as against actual alienation: secured against it, *no* estates *not* so registered. A *charge* is an efficient cause of eventual alienation: considered in respect of the subject-matter it applies to, *a charge* may be termed *general*, or say *generally-applying*, or *all-comprehensively applying*, when it applies to the *whole* of the property belonging to the *charger*, as in the case of a *judgment* or a *recognisance; specially-applying*, when it is only to one particular parcel of his property, and

that expressly mentioned in it, that it applies: as in the case of a *mortgage*, or a *marriage settlement*.

The misfortune is that, be the registration and publication system ever so perfect, no lender of a comparatively small sum, — no person supplying goods or labour to a comparatively small value, — can have in his mind at all times a sufficiently correct conception of the solvency of the landholder whom he serves: the consequence is — that every estate non-alienable for debt, is a ready source, — and, at the pleasure of the owner, an instrument, of fraud. But, so long as the fraud is protected and encouraged by law, the impossibility, of doing every thing, that ought to be done, affords not any reason why as much as can be done should not be done; but, on the contrary, it affords a reason why as much as can be done *should* be done. True it is, that against loss, in comparatively small masses, — or against loss out of *income*, — small, as above, will be the security thus afforded: but, against loss in large masses; against loss out of capital; against the too frequently happening total losses of capital; — it would, in a tolerable degree, be effectual. Under "Matchless Constitution," it is true, no regard for the bulk of the community can rationally be expected: but, for the class to which the rulers themselves belong, more or less regard may be expected on the part of each: and the greater the number to which, to whatever classes belonging, the benefit can be made to extend, the more fully will the wishes of a well-wisher to all alike, be accomplished.

My learned master, I observe, makes much and good use of French law; but he seems not to be aware of the pattern of good management afforded by that law in this part of the field.

Under Matchless Constitution, interest being throughout the whole at daggers drawn with duty, — in this case in particular, the same individual being concerned in conveyances and in suits, the right hand adds to its other occupations that of making business for the left. Thus, under English-bred law: not so under Rome-bred law: in particular, in France. There, the class of *notaries* is a class altogether distinct from that of other lawyers. In that country, the other professional classes cannot indeed but be more or less deeply tinged with the vices inherent in the profession: howsoever less deeply than *here*, where, in every part of it, the whole chaos — substantive law, procedure law, and judicial establishment — has with such matchless skill and success been adapted to the purpose of unpunishable depredation. But, in the notary class, on the contrary, to such a degree of intimacy is brought, in that instance, the connexion between interest and duty — in the notary class, may be seen an example of a degree of integrity, scarcely to be matched in any other profit-seeking occupation whatsoever; accordingly, in that, above all others, may be seen an object of universal confidence. Hands altogether pure from the waters of strife, the notary adds to the trust of the conveyancer that of the banker: but with this difference — that it is only during short intervals that the money remains in his hands; those intervals, to wit, in which such custody is requisite for the purpose of the negotiation; and that, during those same intervals, he *keeps* the money without *lending* it.

Out of this state of things sprung just now an individual occurrence, more forcibly probative than can commonly be afforded of the truth of a general allegation. In France, the notaries form a sort of body corporate. In Paris, an individual of this profession went off, t'other day, with the value of about two or three thousand pounds sterling destined for a purchase. Scarcely had any such act of delinquency been remembered: a commotion, like an electric shock, went through the whole body: on recovery, they made up a common purse, and replaced the loss. In England, Ireland, Scotland (for in Scotland this institution of Rome-bred law has not, to any considerable extent, if at all, been adopted) — in these countries, Diogenes, with his lantern, might trudge on till the last drop of his oil was spent, ere he found the object of his search: in France, where they exist by thousands, he would save his oil, and the labour of laying a trap for his joke.

Apropos of notaries. I will take the liberty of suggesting to my learned master, the adding to his French-law library the standard book on the subject, *Le Parfait Notaire, &c. par A. J. Massé*, 3 volumes 4to. *Paris*, 1825, *cinquième edition*; the precedents in it he would find of a very different complexion from those which have given him so much trouble: much superior in aptitude to those in the Scotch law-book, intituled, *The Office of a Notary-Public:* in my copy, 4th edition, 1792.

Notaries being on the carpet, a word I must put in, in favour of an humble class of late years brought into notice. *Poor man's notaries* they may be styled, or *poor notaries*, or *pure notaries*: *pure notaries*, in contradistinction to *attorney notaries*, as *pure surgeons*, as by some styled, in contradistinction to *apothecary surgeons*. But *pure* my notaries may be styled in an additional sense — in the moral sense: pure from the sinister interest which the attorney notary and the barrister notary have, in making, with the instruments in question, work for themselves in the field of litigation. They are for the most part (it is said) country *school-masters*. These, the attorney notaries, have, as is natural, been, for some time labouring to put out of their

way. Petitions for this purpose have for years been coming in. Alleged grounds—of course, relative inaptitude of these intruders: alleged consequences — immediate inaptitude, in all imaginable forms, on the part of their instruments; ultimately, increase of litigation on the part of their employers. But, if these same alleged, were the real, ultimate consequence, — with no such petitions would honourable table be encumbered. So says *evidentia rei*. Now as to evidence *ab extrà*. That, of the alleged inaptitude, by due search the country over, a body of evidence, larger than could be wished, might be found — the present state of the law is, of itself, sufficient to render but too probable: evidence, of the satisfactoriness of which to an appropriate committee, under the guidance of learned gentlemen, no great doubt need be entertained. But, as in other cases, so in this, — from *positive* inaptitude no conclusion can be drawn, capable of affording a sufficient warrant for the desired practical result, unless it be also *comparative*. Unfortunately for the unlearned clients of the unlearned advocate, — on this ground likewise, learned gentlemen are prepared to ride triumphant. Of law-learnedness in this and the higher grade together, tests over and over again established, approved, and incontestably and exclusively probative, two: — the *financial*, and the *convivial*, or say *mandatory*. Financial: clerkship articles duty, £120; admission duty, £25; total, on capital, £145; add, on income, £8. Tests preferred by Mr. Chancellor of the Exchequer, presumably the *financial*; by Mr. Secretary Peel, declaredly the *convivial*; by their humble servant, the *examinational*.

Be this as it may, for clearing away every shadow of objection on the ground of want of intellectual aptitude, — nothing is wanting but the proposed appropriate code, with an appendix composed of the proposed authorized instruments, adapted to the purpose by the brevity and intelligibility above exemplified. This boon granted, better qualified for the business would be the least learned country schoolmaster, than, under the reign of the present Chaos, the most learned of learned gentlemen can be. In this comparatively halcyon state of things, — in matters of small concern, the instruments of sale and mortgage, together with ordinary leases, wills of personal property, and the most ordinary species of contract, such as apprenticeship articles, hirings, &c. would remain to the humble class of notaries; family settlements and wills of land, to the elevated class. Even thus the business of the unlearned class would naturally be mostly confined within the field marked out by the ready prepared and authorized blank forms: while, for anything *special*, recourse would be had, by those who could afford it, to the learned class. As to *examination*, — plans, applicable to this as well as higher purposes, will, before the meeting of parliament, be at every body's command: title of the work, "Official Aptitude Maximized; Expense Minimized."

Before registration is done with, one word as to the means of *enforcement*. Speaking of the instrument, — in case of non-observance of enactments, "*utterly void*," says page 312. Nor is this (it is feared) the only page. Observe now the effects. In every case, client sinned against; lawyer the sinner: client punished; lawyer unpunished. In the present case, note the situation in which the client is placed. Under the name of a *memorial*, an instrument, containing matter under no fewer than eight specified heads, is required to be drawn up "in the form or to the effect of" a certain article (Art. 101,) .... "but with any alterations or additions which the nature of the case may require: *otherwise*," that is to say if, by the draughtsman, in respect of any one of these particulars, anything is done which, by an equity judge, may be pronounced not to be to that same effect — "every such deed" (it is said) "shall be *utterly void*." Now, then, as to the effects. Frequently, in the shape of capital, is the whole property of the purchaser of an estate embarked in the purchase: not to speak of the cases where, the purchase money being more than his all, a part of it remains charged on the estate, after the estate has passed into his hands. Think what, with a trap of this sort set for him, the hapless non-lawyer has to do, to save himself from it. At his peril he must turn lawyer: do, what by the supposition he is unable to do: for, if able, no need would he have for the professional assistance. But, in this case, an *indemnity* is provided for him: return of his money. Indemnity? Oh yes. Source of it a few years of equity suit, against the perhaps ruined man, by whose indigence most commonly the sale was produced. Lawyer ruins client, loses not a sixpence, and perhaps gets for himself a new suit. For, everywhere so it is — as in procedure, so in conveyancing; making flaw in draught, makes more business for draughtsman. But reputation? Oh, as to this, small here is the risk: *known uncertainty* of the law offers its ready cover to all learned sins. Thus, while in the shape of *pain of nullity*, *punishment* is in appearance employed in the *prevention* of the mischief, *reward* is in reality employed in the *augmentation* of it. Punishment? Yes: and what punishment? Punishment, the evil of which rivalizes with those which are inflicted for the most mischievous crimes. Not unfrequently, sooner than subject himself to any such forfeiture, the defendant — simple debtor or criminal — has been known to embrace imprisonment for life.

Then as to *time*. Thirty days fixed inex-

orably for all cases. But who shall reckon up all the accidents, by any of which, without a particle of blame to the purchaser, performance of what is required, within that time, may be prevented? Day reckoned from, "the date of the deed:"—a day hereby *supposed* to be, in all cases one and the same for all parties: but how often, the act in question is of necessity the work of different days, has been seen above.

One instance more, page 185. Transgression, misapplication of any one of the three obscurified terms—*trust*, *use*, and confidence: penalty, here too expressed by the words "*utterly void*," applied to the "assurances," whatever they may be. Sin here, in every case exclusively the lawyer's: client altogether incapable of ever committing it. Author's design, in this case as in all others, meritorious. But, mode of execution how unfortunate!

Conveyances and contracts, which it is the intention of the law should *not take* effect—yes, to these, it is true, the effect indicated by the words *void* and *nullity*, and their *conjugates* and *quasi-conjugates* cannot but be attached. But then these cases ought to be, as without difficulty they might be, made known to all clients: known, by being particularized in the Code; and every lawyer, participating in the formation of such forbidden arrangements, might and should be, made *punitionally* and *compensationally* responsible.

As to our Reformist,—in extenuation, with but too much truth, may he plead on this occasion universal practice. But, the dereliction of it is one which he will see the necessity of adding to the list of his so highly-needed innovations. Great, indeed, is the progress he has made, in the shaking off the shackles of habit—result of interest-begotten and authority-begotten prejudice: one effort more, however, the present case demands at his hands.

But, what reasonable expectation can you have (it may be asked) of seeing the force of law given to a means of security so galling to the feelings of those on whom the giving that force to it depends? especially if there be any approach to truth in what is said of the proportionable number of those, the nakedness of whose property would, by such an instrument of exposure, be uncovered? *Answer*. In the very modesty alluded to, as a certain cause of defeat, I descry a source of success. In nothing but the fear of such exposure could any man find any motive for opposition. On the bringing in the bill, it might, without difficulty, be sufficiently made known, that the Noes will, all of them, be carefully noted down, and rendered universally notorious. In the instance of each opponent, that which would, in this way, be made universally known is—that, by a difference, the amount of which was matter of shame or uneasiness to him, his actual property wanted more or less of being equal to his supposed property; all that would remain concealed would be—the exact amount. But to any man—to what purpose can such concealment be desirable? Two distinguishable ones alone have any application to the case: obtaining money on a false pretence of solvency; or obtaining respect on a false appearance of opulence: cheating creditors alone; or cheating *them* and everybody else.

Now as to *machinery*. In his haste to arrive at the essentials of his plan, our reformist seems, on this occasion, to have taken up for his support, without sufficient examination, a broken reed of authority; and the consequence is—a choice such as will be seen. No objection, however, does this oversight make to the essentials: for, other machinery (it will also be seen) the case furnishes:—machinery also in use—machinery simple, well constructed, and adequate.

Sets of Commissioners (so say his "Preliminary Enactments,") at least two; all of them (it is presumed) ambulatory. Annual expense, what? Amount not less than £624,000 a-year;* duration, of course as long as said commissioners can contrive to render it. Then comes the *retired allowance system*, and to *years* substitutes *life*. For justice, for security for the whole landed property of the kingdom, no such sum could be spared.—Royal amateurs want it for *palaces*; Lord Liverpool, for *churches*.

So much for the complicated, the slow-working, the expensive, machinery. Behold now the simple, the quick-working, the unexpensive. Precedents six; latest dates of each as follows:—Poor Returns, first accessible batch, anno 1787; (a prior one of

* Counties in England (Wales included) 52; in each, sets of Commissioners two; one for enfranchisement of copyholds, the other for partition of lands, freehold and copyhold; all (it is presumed) circumambulatory; together, 104. Number in each set, at least three; total 312. Of each set, clerical suite and et cæteras included, annual expense, say in round numbers £6,000; (charge for expense of commission for inquiry into the state of instruction in Ireland, was £7,000; ditto for ditto into the revenue of Ireland, £5,675.) First commissioner, say £2,000; puisnes, £1,000 each, (Mr. Peel, if they knew how to eat and drink, would, upon proof from Lincoln's Inn or the Temple, give them twice as much.) If, at a few years' end, they had performed their business—all well, or all ill, or all well and ill at the same time, or some well and some ill,—he would, unless he has repented, add to their salaries, whatsoever they were, a third more. Nominees, of course, the persons most interested in maximizing abuses and indemnities; Lord Eldon, with or without the assistance of Lord Melville and Mr. Wallace, would take care of the abuses; Mr. Peel, unless he repents, of the indemnities.

1777, not accessible;) second batch, 1804; third, and last batch, 1818. Population Returns, first batch, anno 1812; second, and last batch, 1822. Scotch Education Returns, 1826.

Mode of eliciting the information,—author's the *oral;* reviewer's the *epistolary*. For judiciary purposes, for general purposes, — incomparably the best mode, confessedly the oral; the epistolary being but a make-shift — to save delay, vexation, and expense, on the part of the *examinees;* for the particular purpose here in question, probable delay being much less; vexation of examinees much less; expense next to 0.

Number of elicitators;—upon author's plan, as above, 312; upon reviewer's plan, one. Mr. Rickman, whose appropriate aptitude shines with so steady a lustre in the Population Returns, is at his post. House of Commons' clerk finds labour; Honourable House, authority and auspices; Mr. Freeling, with his mails, conveyance.

Time, occupied before the information is completed — on author's plan, what has been seen: on reviewer's plan, as follows: — Poor Returns, in the case of batch the first, time not apparent; Poor Returns, batch the second, date of the latest matter, 12th April 1803; date of order for printing, 10th July 1804: interval, months 15. — Poor Returns, batch third and last, — date of latest matter, last day of 1815; date of order for printing, 3d March 1818; date of order for elicitation not ascertainable without a search, the result of which would not pay for time and labour. — Population Returns, batch the first, — day appointed for the commencement of the operation in the parishes, 22d May 1811; month in which the digest of them was delivered in, June 1812, as per signature, *John Rickman;* interval occupied in collecting and digesting, not more than 13 months. — Population Returns, batch the second, — year appointed for the commencement of the inquiry, 1811; day and month not apparent; month in which digest was delivered in, June 1822; presumable interval occupied in collecting and digesting,— as before, 13 months. — Lastly, Scotch Education Returns, — date of the House of Commons' resolution in which they originated, 30th March 1825; date of Under Secretary of State's letter to the Lord Advocate in consequence, the very next day, 31st March 1825; date of letter from Lord Advocate, sending the first part of the whole of the information, 14th February 1826. Number of pages in the printed copy, 985: interval thus employed in collecting, not more than ten and a half months; within which time was performed a *vibrating* system of correspondence, composed of divers vibrations — letters written backwards and forwards.

In the case in question,—would any greater length of time be necessary? any grounds for any apprehension to that effect, can they be assigned? None whatever. Places constituting the local objects of inquiry and sources of information, — in those cases the *parishes;* in these, the *manors*. Reluctance as to the communicating the information, — in any greater degree probable in this case than in those? No; nor yet so much. In those cases, indemnities being out of the question, nothing was to be got by furnishing the information, nothing to be lost by not furnishing. On the present occasion, more or less may in general be lost, by omitting to furnish the information; more or less perhaps to be got by furnishing it; for, to each individual from whom the information would be required, the consequence of omission would be, that his interest would be disposed of, and in case of loss on his part, no indemnity would he receive.

Il ne faut pas multiplier les êtres sans necessité, says a well-known French proverb: and, of all multiplicable beings,—among those in whose instance the practice of that rule of arithmetic is most mischievous, are locusts.

As to our author's machinery for registration and other purposes,—his *quarter-sessions chairman* and his *clerk of the peace* — still more egregiously unapt is it for this than for its present purposes. But, to his plan, this inaptitude forms no objection: only for elucidation (so he expressly declares,) only for elucidation, does he bring it on the carpet. No fault is it of Mr. Humphreys, if, in the whole establishment, there is not a single judicatory that is in any tolerable degree fit for any other purpose than those for which, under Matchless Constitution, all judicatories, with but here and there an exception, have been invented—putting power into the hands, and other people's money into the pockets, of the inventors. A machinery adapted to his purposes — a *judiciary establishment*, with a correspondent *procedure code*,—each of them the first that ever really had for its sole object the giving execution and effect, with the minimum of daily vexation and expense, to the enactments of the substantive branch of the law, — is in progress; and the judiciary establishment plan will be in the printer's hands within a few weeks after the present pages are out of them.

Before concluding, I will take the liberty of suggesting, for his consideration, as briefly as possible, a few supposed improvements, of which his plan presents itself to me as susceptible: to do whatsoever else may be in my power, towards lightening his labour, and promoting his generous designs, would be a sincere pleasure to me. If, for the most part, these same suggestions should be found to apply to every other part of the field of law, as well as to the part on which his beneficent

labours have been more particularly employed, — they will not, on that account, be the less excusable.

Distinguishable shapes, which the matter of a proposed code may, throughout the whole texture of it, have occasion to assume, five: the *enactive*, the *expositive*, the *ratiocinative*, the *instructional*, the *exemplificative*. Of the exemplifications of them exhibited in this work of our learned author, presently: in English statute law, sole shape exemplified, — the *enactive*. As to this same enactive shape, with an exclusion put upon all the others — nothing, with a view to rulers' purposes, could or can be more convenient. Expression of will this, nothing more: talent necessary, none beyond what is manifested by every child as soon as it can speak. Not so any of the four other sorts of matter. Not to speak of Russian, Italian, and Spanish translations — of the expositive and the ratiocinative, the French work, in which samples of them are exhibited, has been before the public ever since 1802, and another there has just been occasion to bring to view. Grades of functionaries, to either or both of which the *instructional* portion of the matter may be virtually addressed — *subordinates*, with a view to execution and effect; future *legislators*, for the better explanation of the designs, with a view to fulfilment.

Case to which the *exemplificational* more particularly applies, that of an as yet only *proposed* code. Legal systems, from which the matter of it may be derived, two: the *home*, and the aggregate of the most approved *foreign* ones: the *home* system, for the purpose of exhibiting in detail the *disorders* for which the code is the proposed remedy, and examples of particular arrangements, in themselves of a *beneficial* nature, but in respect of which the system, taken in the aggregate, is chargeable, — on account of the narrowness of the application made of them, and, throughout the remainder of the field, the employment of flagrantly-unapt arrangements, to the exclusion of them: the *foreign*, for the purpose of furnishing, under this other head, in support of what is proposed, the instruction afforded by experience. Note, that this same *exemplificational* matter must not be confounded with the matter composed of those *examples*, which there may be found occasion to give as an inseparable part of the *enactive*, though they may be considered as belonging also to the *expositive*.

Next to the *expositive* matter. Purpose of it, exclusion of the several imperfections, which, on every part of the field, and on this in particular, *discourse* is liable to labour under. These are, on the part of hearers and readers, *nonconception* and *misconception*: on the part of the discourse itself, *unintelligibility*, *obscurity*, *indeterminateness*, *ambiguity*. Against some of them, howsoever well framed the instrument in other respects, appropriate *exposition* will be an indispensable preventive remedy. But, to none of them, without the aid of another remedy, of the purely negative cast, namely, avoidance of *lengthiness*, can it be a sufficient one. As to lengthiness, — it applies, not only to the entire discourse, but also, and with different and still worse effect, to its component parts called *sentences*: and it is in this latter case that it is in a more particular degree productive of these several imperfections.

Efficient causes of *lengthiness* in sentences, — *surplusage* and *involvedness*. Of imperfection in both these shapes in *conveyancing* instruments, examples have been seen above.

Causes of imperfection in *all* these shapes, more particularly in that of ambiguity — not only *mis-selection* and *lengthiness* as above, but *miscollocation* likewise; miscollocation, whether applied to words or to phrases. For the avoidance of it, a set of rules will ere long be (it is hoped) at my learned master's service. For the exemplification of imperfection in all manner of shapes in *laws*, matter in rich harvest may be found in the English statute book: the most conspicuous repository of every imperfection of which legislative language is susceptible. Towards remediation, a disposition has of late been expressed by those on whom it depends: but, before that is done which the proper end in view requires to be done — before the form in which they are presented is the same with that in use in ordinary discourse, with no other difference than what is necessary to the exclusion of the above-mentioned imperfections — not inconsiderable is the quantity of matter, which, in the form of directive rules, will require to be framed, borne in mind, and for that purpose consigned to black and white.

Collocation — is it a light matter? Is it without effect on practice? Read this one line, and judge: "*Parliament*," says the statute (4 Ed. III. c. 14,) "*shall be holden every year once, and more often if need be.*" Miscollocation *that*. Proper collocation *this*: "*Parliament shall be holden every year once — and, if need be, more often.*" Not that there can be any adequate assurance, that by this or any other form of words, the would-be despot, in whose face this bridle was afterwards held up, would have held himself bound. But, if he had been — think of the effect that might have been produced in the destiny of England; and, through England, of the habitable globe. For general application, take this rule. Imbed, as above, your *limitative* clause in that one of two *principal* clauses, to which alone it is designed to be applied: imbed it in that *one*, instead of putting it at the *end* of the *two*, in one of which it is *not* intended to be applied.

Of exposition-requiring terms, — groupes, which it may be of use to distinguish, these:

I. Terms of *universal* jurisprudence. Examples: 1. Obligation. 2. Liability. 3. Right. 4. Power. 5. Responsibility. 6. Possession. Original source of exposition to the whole group, the idea of *a command*.

II. Terms peculiar to *English-bred* jurisprudence. Examples from the field of property-law: 1. Feoffment. 2. Lien. 3. Trusts. 4. Uses. 5. Springing Uses. 6. Executory Devises. 7. Tenures. 8. Mortmain. In regard to these, — in a code on the new plan, only in respect of the use made of them in such parts of the existing law as remains unabrogated, — will *exposition* be the proper course. From the enactive part of the new code, these, and all those words which nobody but a lawyer understands, should be carefully excluded: — those alone employed, which, with or without exposition therein given, will be understood, — not by lawyers alone, but by everybody else.

III. Terms belonging to the common stock of the language; but to which, by distortion, lawyers have given an import intelligible to none but themselves. Examples: 1. Applied to the subject-matter of property, — *real*, instead of the appropriate and Rome-bred denomination *immoveable*. 2. *Personal* instead of *moveable*. 3. Applied to a conveyance, *voluntary* instead of *gratuitous*. 4. *Servitude*, instead of *partial ownership rights*, with the correspondent *obligations*. Wanted, for this idea, a more expressive *single-worded* denomination. *Servitude*, a word unknown to English law: instead of a particular interest in a *thing* immoveable, the idea it presents to a non-lawyer is — the condition of a *person*: — a condition bordering upon slavery. Here I have to turn informer. Smuggled in, by this reformist of ours, has been this same word *servitude*: introduced, without notice, from continental into our insular language.

IV. Terms belonging to the common stock of the language, — but, by reason of their ambiguity, coupled with frequency of occurrence and importance, with reference to practice, — their import needing distinction and fixation: — terms universally intelligible, but by reason of their ambiguousness, not the less needing to be thus fitted for use. Examples: 1. Land. 2. Modifications of place. 3. Divisions of *time*. Sub-examples under this head: 1. *Day*, the portion of the *year*: day, in contradistinction to *night*. 2. *Month* lunar, month calendar. 3. *Year* ordinary, year bissextile.

V. Words there are, which, notwithstanding the all-comprehensiveness of their extent, and the need there will be of them in an all-comprehensive code, need not any express definition, their import being on each occasion rendered sufficiently determinate. To this head belong divers names of *genera generalissima*, besides the jurisprudential terms brought to view above. Examples of these terms: 1. Subject-matters of operation: 2. Operations. 3. Correspondent functions. 4. Operators. 5. Instruments. 6. Judicial and other mandates. 7. States of things. 8. Events. 9. Occurrences. A pretty copious collection of them may be seen brought together and applied, on the occasion of the employment given to them in the above-mentioned Constitutional Code, chap. ix. Ministers collectively. § 7, *Statistic Function*.

In the case of all those more especially influential terms, — an accompaniment, in no small degree beneficial, might be — a list of *synonyms*: synonyms to single words, *equivalents* to short phrases. Not very numerous, comparatively speaking, are perhaps the pairs of words, which, on every possible occasion, may be used interconvertibly, each with as much propriety as the other. But, on each occasion, where any difference has place, the context will suffice, for security, against the endeavour, on the part of litigants, to produce, on the ground of the attached synonym, a wrong interpretation of the word employed in the text. By a characteristic feature of the proposed system — the *ratiocinative* part, — an additional, and hitherto unexampled security will be afforded.

As to our learned Reformist's Code,—short as it is, candidates in it for the honour of receiving exposition, I have made out a list of, not fewer than 289, belonging to one or other of the above divisions. These, however, in no inconsiderable number, apply not to this alone, but to every other portion of the *Pannomion* — the All-comprehensive Code. Of the whole stock belonging to that aggregate, the number, of course, cannot be small; but the field they belong to is proportionably extensive. The time for each of them to receive its exposition, is the time when the subject it belongs to, is for the first time brought upon the carpet.

Problems for solution: 1. How to distinguish terms needing, from terms not needing, exposition? 2. How to distinguish terms needing to *receive* exposition from terms fit to be employed in *giving it*? Scarcely, even, for *statement*, can room be found here; for *solution*, none: purpose of the statement, showing that they have not been, and saying that they ought not to be neglected.

Now as to the *ratiocinative* matter. For arrangements and correspondent enactments, in that part of the field of law to which the work in question more especially applies — standard of aptitude say, the *disappointment preventive*, or *disappointment prevention principle*, — or, more specifically, the unexpected-loss-preventing principle: — a branch this, of the *greatest happiness principle*, with a

special denomination adapted to the matter belonging to this part of the field. — Prevent disappointment? Why? *Answer*. From disappointment, as everybody knows and feels, springs a pain; magnitude, proportioned to the value set by the individual on the benefit that had been expected. In this pain will be found the only reason, why any subject-matter of ownership should be given to the owner rather than to an usurper: to an usurper, by what denomination soever distinguished: *intruder*, *diffusor*, *embezzler*, *thief*, *robber*, and so on: the only reason why, to interests termed *vested*, more regard should be paid, than to interests not so denominated: the only reason why, for loss, — on any occasion, or from any source, — *indemnity* should be provided. From the non-possession of the millions of watches existing in other pockets, —you, who read this, do you suffer anything? Not you: and why not? because, not expecting to possess any one of them, — no *pain of disappointment* do you suffer from the non-possession of it. But, if by any hand other than your own — a thief's, an unjust claimant's, or a judge's, it were taken from you— yes; in any one of these cases a sufferer you would be: — quantum of suffering, in a ratio, compounded of the marketable value of the watch with the indigency of your pecuniary circumstances, to the purpose of replacing it, and the relative sensibility of your frame.

Here, then, is an intelligible standard, and the only one. Behold now the *effects* produced by the hitherto universal want of it. Succedaneums, in number infinite; but not one of them expressive of anything, besides the ungrounded *sentiment*, or say *mental sensation*, entertained, on the occasion, by him who speaks: — a sentiment of approbation or disapprobation, expressed under the expectation of finding, or producing, the like on the part of hearers, but not suggestive of any *ground* whatever, for the sentiment so entertained.

Examples deduced from this work of our Author's are the following: — "1. Natural Justice, p. 118, 119. 2. Equity, 119. 3. Natural Equity, p. 129. 4. Justice, pp. 161, 221. 5. Natural feeling, p. 203. 6. Harsh law . . . . cries feelingly for correction. 7. Our present law violates the first principle of property, p. 220." First principle of property? What then is its name? None does our author himself give to it: none has any person else ever given to it. Not so much as that given in Rome-bred law, in the quasi-Hibernian style, to the species of contract denominated the *undenominated*. Yet, for it to have a name — and highly urgent is its need of one — somebody must stand godfather. Well, then, this is done. As to the thing itself, gratifying it is to me to see my learned master already recognising it, and applying it. Witness two passages, § 114: "One claimant ought not to *disappoint* another:" p. 148, "The lord's *gain* is far from commensurate to his tenant's *loss*." Compare this with what, by the courtesy of England, is called *reasoning*, in judge-made law!

The honest and excellent work in French law on this subject, *Le Parfait Notaire*, has been already mentioned. In cutting open the leaves of it, no fewer than fourteen of these gaseous standards caught my eye. A list I took of them has unfortunately been mislaid. In addition to those above-mentioned, "Policy, Right Reason, Natural Reason, Law of Nature," &c. &c. were of the number. In many instances, they were even brought together, and stated as conflicting. Now, then, of these non-entities, suppose eight on one side, six, and no more, on the other, — then indeed should we have a majority. But suppose fourteen of these *puissances* ranged, seven on one side, seven on the opposite side; if these are to be taken for reasons, the most clear-sighted and decisive judge may avow himself a Lord Eldon without shame.

Now as to our learned author. Expositive matter he has given us a specimen of in 10 out of 118 articles: namely, in Art. 5, Land; 28, Execution of a Deed; 29, Conveyance; 30, Settlement; 31, Charge; 32, Assignment; 33, Release; 35, Execution of a will; 74, Warranty; 88, Trustee.*

His mode of exposition is, — in the case of all but Land, Execution of a Deed, Execution of a Will, and Trustee, — definition *per genus et differentiam*: in the case of *Land*, not found referable to any general head: the expression not quite so correct as could have

* A few words àpropos of this word *trustee*. In every trust there are three characters essentially and indispensably concerned — *trustor*, *trustee*, and *intended benefitee*: distinguishable characters on every occasion these three: though, on some occasions, two of them, as if by Mr. Matthews, are played by the same person: on some occasions, *trustor* being at the same time intended benefitee, or one of a number of intended benefitees; so, on other occasions, *trustee*. But, be this as it may, without an intended benefitee, a trust can no more have existence than without a trustor or a trustee. In the Code, Art. 4, p. 184, mention is indeed made of "*the beneficial owner*" as a person for whom a nominee is supposed to be "in trust." But, this same beneficial owner —no where is he mentioned, as being, like *trustor*, one of the company: and as often as, and in proportion as, a breach of trust has place, the intended benefitee fails of being beneficial owner. Add to this, that, under a trust, a benefit may be intended and received, where there is nothing that it would be easy to fix upon as being *owned*. Exposition, proposed in form of *paraphrasis* — (definition, in the ordinary sense of the word not being obtainable for want of a superior *genus*.) — *Breach of trust has place, when, and so far as, through the fault of a trustee, a benefit, intended for the intended benefitee, fails of being received.*

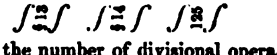
been wished: ground-works and underground-works not found comprised in it. In the case of the remaining three, *paraphrasis;* of which, elsewhere.

But, with this, or any other incomplete assemblage, we shall not be satisfied: nothing less than an all-comprehensive one does the purpose require. Composed of the two first of these five sorts of matter is his *Code*, distinguished from the rest of the work by being printed in italics; of the ratiocinative, instructional, and exemplificational indistinguishably blended, the rest of the work; *rest, residue, and remainder* in the language of learned gentlemen.

At the head of each article, a notice, — affording, by means of one or more of these five denominations, intimation of the nature and design of the articles, — is a document, that has presented itself as having its use, with the exception of the *exemplificational*, which had not as yet occurred to me; they accordingly exhibit themselves throughout the whole texture of the so often mentioned Constitutional Code.* Unfortunately, so to order matters, as that under no one of the four first of the above-mentioned five heads, shall any matter be inserted, that can be referable to any or others of them, — has not been found practicable. On the contrary, all the *changes*, of which the number of heads prefixt to the same article is susceptible, will perhaps be found rung upon them.

Nomenclature, for a series, or chain, of any length, of the results of successive *divisional operations*, performed upon the same integral subject-matter. Principle of denomination, the *numerical*. Subject-matters, to which, in the character of *integers*, it is applicable. 1. Our *globe*, or any portion of it. 2. The *three kingdoms* metaphorically so called — the mineral, vegetable, and animal. 3. *Weights and Measures*. 4. A mass of discourse committed to writing — *a literary work*. In this last instance it is that the idea applies, on the present occasion, to our author's case.

Denominations, *section*, *bissection*, *trissection*, *quadrisection*, and so on. Correspondent visible sign for the eye, the present mark employed for designating a *section*, a double long *ff* —; between its two lines the figure



indicative of the number of divisional operations, to the result of which it is employed to give expression. By the little swelling produced by this *pregnancy*, no peremptory objection will, it is hoped, be found produced: or, to avoid it, instead of being imbedded between the two *ff*, the numeral may have a single *f*, in a fine stroke drawn through it. By these little arrangements, simple as they are, order might, for the first time, be substituted to the as yet universally existing chaos: and, to an inconveniently inadequate, an adequate stock of denominations substituted. *Part, Book, Chapter, Section, Article, Title;* scarcely beyond this does the list extend; and, as to the order in which they are made to follow one another, the changes are in a manner rung upon it.

Now as to our author and this his work. Denominations employed in the order in which they here follow, these: 1. *Part.* 2. *Title.* 3. *Chapter.* 4. *Section.* 5. *No.* At this last stage, his stock of denominations is exhausted: the consequence is, — that for the results of the division made of the aggregate to which he has given the name of No. are employed the words firstly, secondly, thirdly, fourthly, fifthly, all in a state of anarchy, without any common head for keeping them in a state of society.

Of all these denominations, *section* (from *seco*, to cut) is the only one completely characteristic. Reason for employing it — its having, as above, an appropriate sign belonging to it. *Article* followed by *No.* there may be a convenience in employing, — for the *last*, whatsoever may be the number of the intervening divisional operations: these being the two denominations most commonly so employed.

Alike applicable to whatever languages are in use in any nation — this mode of designation might form part and parcel of an *universal language*. In the above-mentioned proposed Constitutional Code, I regret to think it will not be found applied: it had not occurred time enough.

Two other little tasks, at parting, for our Hercules.

I. For the instruction of *testators* and their draughtsmen, — a paper, exhibiting a picture of the most commonly-exemplified diversifications, which the state of a person's *family connexions* admits of, with a view to the provisions desirable, and likely to be desired to be made for them, *in a last Will*. For such provisions as require to be made by a *Deed*, this picture is already afforded by the Family Settlement Deed. But in this case the provision goes not beyond a *future contingent* family. Remain, for the objects of the here-proposed provision, all such families as are already in existence.

II. Provision, against the mischief, liable to be done by the *retroactive effects* of the proposed new system: — mischief, of the nature of that, by which the name of an *ex-post-*

* An extract from it is already in print, composed of four sections, belonging to Chap. IX., intituled *Ministers Collectively*. With the addition of other tracts belonging to the same subject, it forms an 8vo volume, under the title of *Official Aptitude Maximized, Expense Minimized*. The volume will appear in the course of a few weeks.

facto law in English-bred law language (of kin to which is that of *privileyium*, in Ciceronian and Rome-bred law-language) has with so much justice been rendered a name of reproach. Here, if I mistake not, he will feel the convenience of taking the *disappointment-preventing principle* for his guide;—and, doing so, will find in it an adequate defence against all objections. What the occasion seems to call for is — a detailed exposition of the arrangements proposed for the exclusion of mischief from this source. Self-regarding prudence presents itself as joining with benevolence in calling for a careful attention to this subject. On this part of the ground, I see the enemy lying in wait for him. His defences, I fear, are not, as yet, in quite so good a condition as the occasion requires.

One passage exhibits a spectacle I was not prepared for: where our author, taking a sudden spring, mounting Pegasus, and from *civil*, making an excursion — an uncalled-for excursion — into *constitutional* law. It is in page 206. Libellous the result: "*feelings*," not the less acute by being democratic, "*hurt*" by it. Revenge is sweet: retaliation cheaper than prosecution.

Author. — "The many are a rope of sand."

Reviewer. — Say, are they so in Yankeeland?

Answers, like Irish Echo, envious Muse.

Was it, to propitiate those on whom every thing depends for success, that this *tirade* was inserted? If yes, when Sterne's Accusing Angel goes up with the passage, the Recording Angel shall have my consent for dropping his obliterating tear on it.

To preserve myself from the consciousness, as well as the imputation, of injustice, — one last word more. Bringing to view supposed imperfections and deficiencies has all along been the chief occupation of this Review: — imperfections, for correction; deficiencies, for supply. Of the mass of useful information, for which we are indebted to our philanthropic reformist, — of the ability, as well as honest zeal, displayed in the exposure of the peccant matter of which the existing system is almost exclusively composed, — of the ingenuity, manifested in so large a proportion of the remedies suggested, — no mention has been made but in the most general terms: But, to have conveyed any thing like an adequate idea of the merits of the work, would have required what, in classical editor's language, is called *a perpetual comment* on it, including a reprint of the greatest part of it.

As to myself, never, but for my learned master, should I have obtained any tolerable insight into this chaos. No probable further prolongation of my life would have sufficed for enabling me to look into it without the *lantern* with which he has furnished me — "*lucerna pedibus meis:*" — to look into it — I mean for the only purpose — the remedial — for which I could have brought myself to look into it.

— Hoping that such rare talent, coupled with such still more rare virtue, may not be lost to the world, or wait long, ere it be employed by those in whom alone is the power of giving effect to it, — I conclude.

OUTLINE

OF A

PLAN OF A GENERAL REGISTER OF REAL PROPERTY:

CONTAINED IN

A Communication to the Commissioners appointed under Letters Patent, of date the 6th June 1828, *to inquire into the Law of England respecting Real Property, and first printed in the Appendix to their Third Report, ordered by the House of Commons to be printed, 24th May* 1832.

GENTLEMEN, — 1. By your circular, dated the 6th and 8th of August 1829, and addressed to various persons, of whom I then was, and now continue to be, one, you were pleased to call for suggestions on the subject of registration, as applied to men's titles to the subject-matters of the sort of property termed in English law *real property*. The present paper is written and presented to you in obedience to that call.

2. By your letter of the 18th of August 1829, addressed to myself alone, in answer to mine to you of the 15th of that same month, you were pleased to honour me with an assurance in these words: "They" (meaning you the said commissioners) "have no hesitation in saying, that they should think it their duty to include whatever may proceed from him" (meaning myself) "in any appendix to the report which they may hereafter make to his Majesty." On this assurance the present communication places its reliance.

3. The observations here submitted have for their immediate, appropriate, and by you expressly authorized subject-matter, the plan proposed for the institution in question by yourselves. But, by this as by any other proposal which is transmitted to any person for examination, reference, if not expressed at any rate implied, is made, or authorized to be made, to some determinate set of notions considered as constituting a standard of propriety, — in a word, to some *principle* or set of principles. I shall therefore, in so far as my own conception of my competence extends, take the preliminary liberty of submitting to you the *leading features* of the sort of plan which, to myself, presents itself as most eligible, prefaced by a short exposition of the principles from which they emanated, and to which they look for their support.

4. Superior utility and novelty. In these I behold two qualities, the union of which is indispensably necessary to constitute a sufficient warrant for any such communication as that in question. Yes, novelty: for in the idea of *absence* of *novelty* is included *absence* of *usefulness*, *presence* of *uselessness*. So far is novelty, when taken by itself, and not alleged to have inaptitude for its accompaniment — so far, I say, is it from constituting any reasonable ground of objection to a plan for this or any other purpose.

5. If this be true, what shall we say — what shall we think — of those by whom, without controverting the utility of a proposed plan, be it what it may, the alleged *novelty* is held up to view in the character of a ground for the rejection of it — of those, in a word, by whom the word *innovation* is employed as a token of disapprobation and an instrument of censure?

6. As to my own competence, I consider it, and accordingly speak of it, as having certain defined and precise *limits*, and on the outside of those limits lies all information as to all such matters of fact the knowledge of which is not capable of being possessed by an individual not actually engaged in the practice of the profession, which has for the subject-matter of its exercise the subject-matter of the commission in virtue of which you have been pleased to make this call upon me; whatsoever, therefore, I shall venture to propose, you will understand as calling upon you for amendment, as far as requisite; amendment, in every one of its three shapes — subtraction, addition, and substitution.

7. On this occasion, the part which I take in the business will be seen to confine itself to the giving a comparatively small number of suggestions, by the adoption of which, if, and in so far as, my view of the matter is correct, it would be put into a new, and that the most appropriate conceivable form.

8. In and by various parts of my publications, I stand pledged to the public never to propose or advocate — never to oppose and combat — any law or institution actually established, or proposed to be established, without attaching to it an accompaniment, composed of *reasons;* meaning by *reasons*, considerations having for their object the showing in what manner, immediately, or through the medium of a chain of any length, of causes and effects, the arrangement proposed presents itself as likely to give a net increase to the *happiness* of the person or persons in question; that is to say, to the balance on the side of *pleasure*, after deduction made of the quantity of pain experienced during the period in question. As on all other occasions, so on this, by this engagement I regard myself as bound.

9. In one of those same publications, in particular, the subject-matter of consideration comprehends the entire aggregate of all the several sorts of *functionaries* of which the official establishment of any country is, or in the nature of things can be, composed; those here in question are consequently comprised; and throughout that work may be seen a specimen of the above-mentioned accompaniment, namely, in the instance of every article which has for a heading the word *ratiocinative*. The work I am alluding to is that which has for its title "Constitutional Code; for the use of all Nations and all Governments professing Liberal Opinions."

10. So much as to my plan. Now, gentlemen, as to yours, considered in like manner with reference to *reasons*. Your plan is before the public; with all due deference, what I have to propose is a somewhat different one. Your reports on the subject lie before me. I look in them for *reasons:* I find in them no such thing. A bill, moved for in pursuance of those same reports, has been before the public. I look in it for *reasons:* neither in that same proposed law do I find any such thing. As in the one instrument, so in the other, *stat pro ratione voluntas*. As for me, — *my* will not having any chance for the being clothed and armed with legal power, — the power of reason, if I can find any on my side, is my sole resource: *stat pro voluntate ratio*.

11. Is it even *unprecedented*, this same accompaniment? Look to *Westminster Hall*. In Westminster Hall, when in a judicatory, a judge, and in particular a Chief-Justice, bears his part in the making of the sort of decision called a *judgment*, and, for a *ground* of that same judgment, delivers his *opinion;* in this case, if the importance of the matter presents itself to him as calling for any further support, he fails not to deliver his *reasons*.

12. Again. When, from the judgment of one judicatory, a party makes his appeal to another judicatory; in this case, also, a man submits to the superior authority in question his *reasons*.

13. Now then, gentlemen, — in your quality of learned gentlemen, let me ask you — if in the business of *judicature* a support of this kind is needful, how much stronger is not the need of it that has place in the business of *legislation?* — that business, to the importance of which, the extent of the consequences considered, the importance of the business of judicature is but as number *one* to infinity.

14. Not altogether insensible to this demand has the Legislature of this country been even in its hitherto corrupted state. At the commencement of a statute, something in the guise of *reason* has been customarily and regularly served out. Served out! Yes; but of what sort? Of a sort such as a *Bridoison* in the drama of Figaro, or the Old Woman in the history of Little Red-Riding-hood, or a legislator in the land of Gotham, might have been proud of.

15. "*Whereas it is expedient*" — With these four words commences the train of surplusage, of which, under Matchless Constitution, the greatest part of an act of Parliament is so regularly composed: of these words is composed the whole of that portion of matter in which the draughtsman places his trust, in the character of a *justification* for the exercise made by him of that authority of which he is the organ, when laying about him and scattering broad-cast the seeds of good and evil, with so little expense in the shape of *thought*.

16. Now then as to the particular bill above alluded to. In that same bill, on looking into it for *reasons*, though I cannot find any such thing, yet what I do find is the just-named something which seems intended to serve instead of reasons. It is composed of those same four words — "*Whereas it is expedient:*" it is that same *Vox et præterea nihil*. I speak thus freely; because, if in that same *dictum* there be anything of *fatuity*, or if you please, of *silliness* (and in my view of the matter, that there is, in abundance,) you, gentlemen, are not, any of you, chargeable with it. How little soever in accordance with *reason*, this phrase, it cannot be denied, is most perfectly in accordance with *precedent:* without it, this or that high functionary, whose name, official and personal, sooner or later shall and will be made publicly known, — inasmuch as his remuneration has been made to rise, in proportion as the rule of action has, by its immensity, and obscurity, and richness in surplusage, been made to increase in inaptitude

for its professed purpose,—this self-authorized and self-paid comptroller of the authority of the King in Parliament, this secret imposer of taxes for his own benefit, might find the *bill* incomplete, and as such find *himself* obliged to throw it overboard.

17. Houses, honourable and right honourable, have each of them its *standing orders*. They have in common this one *standing reason*. It is as good for one thing as another: for one proposed enactment as for another. In this its aptitude, however, there is nothing of peculiarity: nothing but what might be shared with it by any other four words, drawn, in the way of lottery, out of a dictionary.

18. Such is the sort of embellishment belonging to a *bill* — meaning a future contingent *statute*. Of a piece with it — in exact keeping with it — are, in a *speech*, the two locutions — "*contrary to every principle of justice*," and "*contrary to the first principles of justice*," bearing upon the face of them the marks of the above-mentioned country of *Gotham*, as the country from which these commodities were, all of them, imported.

19. But, of this last-mentioned embellishment, the ground to which it is suited, and on which it is commonly embroidered, being, not a *bill*, but a *speech*, I find not any exemplification in the authoritative article of piece-goods I have been speaking of. Only, therefore, for *elucidation*, — or, if you please, for *illustration*, — not for *justification*, is the mention made which I have ventured thus to make of it.

20. Happily, a new order of things is at length born. *Nonsense* will not, for ever, sit on the throne of *common sense*.

21. *Reasons, principles, ends, means, rules, maxims, axioms, positions, propositions*. On the present occasion, had I to do that which, on some future occasion I may not impossibly have to do, — namely, in my address to you, to take for the subject-matter of it the *whole* of the field of *real property*, — in that case, in the character of *principles*, I might have to submit to your consideration no fewer than seven-and-twenty words, or sets of words, which, in the form of a *tree*, composed of a trunk with branches and sub-branches, called by logicians in former days the *arbor porphyrium*, lie at this moment before my view; and with them would come the whole *cortége* (as the French say) of the *genera generalissima* above-mentioned: for, wheresoever I tread, my wish and endeavour is to find, and if I do not *find* to *make*, my foundation sure. Happily for us all, on the present occasion, not more than two of these principles will it be necessary for me to trouble you with; with the addition of a small quantity of matter, under the head of *reasons* and that of *ends and means:* and a few preparatory propositions, which present themselves to my view, as being relevant, conclusive, and incontestable.

22. These principles are — 1. *The greatest happiness principle*, or say, *the happiness-maximizing principle;* and, 2. *The disappointment-minimizing*, or say *disappointment-preventing*, or say *non-disappointment-principle*. Yes, verily, the *disappointment-minimizing* principle. Nay, good gentlemen, do not be horrified by it; for here, not only on *sure* ground do I tread, but, as you will see, on *authoritative* ground; on ground, which you will find yourselves *estopped* from denying to be authoritative.

23. As to my *reasons*, what I cannot but apprehend is, that by the mention thus and here made of them, may be called to the minds of some of you the image of the old steward in Addison's drama of the Haunted House, who, after speaking of *reasons* and of *many reasons*, goes on to say, "at present I shall mention only seven:" but for this I must take my chance.

24. Now for my authority. Truly gratifying it is to me on this occasion, to find in accordance with this notion of mine about *disappointment*, the opinion, as proved by the practice, of a distinguished member of your own body. It preserves, in the completest manner, from the reproach cast by the word *theoretical*, this same *disappointment-minimizing* principle.

25. In the so admirably instructive and useful work of Mr. Tyrrell, intituled "Suggestions sent to the Commissioners appointed to inquire into the Laws of Real Property," I have the satisfaction of seeing this same principle three several times referred to as the ground of the arrangements which he recommends.

I. In page 121 — "The expense, uncertainty, and *disappointment*, which usually attend suits for long-forgotten claims, render them," says he, "a source of more injury than benefit to the church."

26. II. In page 239 — "Tithes, under a descent," says he, "can never be considered secure, until the right of the devisee has been barred; and a few cases of hardship to *disappointed* devisees are not," continues he, "of so much importance as the advantage — the safe alienation of property." Thus far Mr. Tyrrell.

27. And if such is the *inferiority* of the importance of these few cases of hardship to *disappointed* devisees, whence comes this same inferiority? — whence comes it (I ask) but from this, namely, that, in the cases in which by the result the alienation has been shown to be unsafe, *disappointment* has been produced by that same result, and that *these* cases having been *more numerous* than those others, the sum of the *pain* that has thereby been produced in these *last*-mentioned cases,

is greater than that which has been produced in the *first*-mentioned cases?

28. III. Lastly, in page 312 — speaking of of the wording of a certain devise (the particulars of which are not material to this purpose,) he gives as the reason of the *construction* (or, as a non-lawyer might say, the *interpretation,*) he recommends, this — namely, that "if no gift had been made to the owner of the property, the person to whom it was devised must" (he says) "have been *disappointed;*" meaning evidently that, on the supposition, that, if in the sort of case in question, the disposition made of the property in question by the judge, is that which he (Mr. Tyrrell) recommends,—on that supposition in the breast of the party in whose disfavour that same disposition operated either no such pain at all would be produced, or if any (pecuniary circumstances being supposed to be on both sides equal,) the *pain* would not be so great as in the contrary case.

29. I come now to speak of *ends* and *means*: ends, the attainment of which ought to be kept in view and aimed at, on the occasion of whatever arrangements come to be taken for the establishment of the proposed institution, and are accordingly aimed at, in the suggestions which here follow. These ends are distinguishable into two — namely, the *primary* and the *secondary*.

30. First, as to the *primary* end. The evil, against which a remedy is hereby endeavoured to be applied, consists in the unexpected loss of money or money's worth: the *primary* end aimed at is — the prevention of this loss.

31. Then, as to the *secondary* end. On the occasion, and for the purpose, of the application of this remedy, a certain series of *operations*, or (as among lawyers the phrase is) a certain *course of procedure* is necessary: on which occasion, evil to a greater or less amount in the several shapes of *delay*, *expense*, and *vexation*, cannot but have place. In the remedy we behold a *benefit;* in this last-mentioned evil we behold a *burthen*, attached to that same benefit; and what remains, after subtraction of the amount of the burthen, will be the *amount*, or say *clear value*, of the benefit; and the institution having for its *primary* end the conferring on the individuals interested that same *benefit;* the minimization of this same *burthen* is that which it has for its *secondary* end.

32. Just so is it in the case where, instead of a *register-office*, the scene lies in a *court of justice;* the benefit sought is a remedy against wrong; and this is what that institution has for its *primary* end; the attached *burthen* consists here also of *evil* in these same several shapes of *delay*, *expense*, and *vexation:* and the minimization of the evil, in these its several shapes, has been considered and spoken of as that which the institution of a court of justice, with its course of procedure, has for its *secondary* end.

33. On examination made into the *manner* in which these two ends — the primary and the secondary — may most effectually be attained, namely, by the maximization of *aptitude* on the part of the *matériel* as well as the *personnel* (to borrow a phrase from the war department) — that is to say, the *building* or *buildings*, and its or their *official inhabitants*, — together with the minimization of the *expense* — my eyes have fixed upon *seven* distinguishable *objects* in the character of *means*, each of them, for the attainment of one or both of these two ends; and, within the field of each of these seven *objects*, *means* of a more particular nature, which, with reference to them, may be styled *means of effectuation;* and which I shall accordingly designate by such their proper name.

34. *Objects* and *means of effectuation* taken together, thinking that to this or that one of you, gentlemen, it may perhaps be matter of convenience to have them upon occasion visible, all of them, at one and the same glance, I have given expression to the *tout ensemble* of them on the same side of a leaf of paper, in and by a *table*, which will almost immediately present itself to your view.

35. Of the *evil*, the prevention of which constitutes the *primary* end, five different modifications may be distinguished, each liable to fall on a correspondent description or class of persons: the diversity in the description of these same modifications of the evil will be seen to have for its cause a correspondent diversity in the relative situations of the classes of persons who stand opposed to it.

36. In all five cases, the loss, with the suffering consequent upon it, has for its efficient cause the *badness* of the *title* to the subject-matter of property in question. In some one of these same cases, the suffering has for its *immediate* cause the actual loss of an immovable subject-matter of property or some interest therein; in others, loss in the shape of *money;* in others, again, that which the suffering has for its immediate cause, is that which may with more propriety be considered as *non-acquisition of profit* or say *benefit*, than positive *loss* or say *burthen*.

37. Here, then, in the *aggregate*, are so many cases of *suffering*, which, when regarded separately, may be thus described:

I. Case the *first*. — Sufferer, a person who is in possession or in fixt expectancy of a subject-matter of real property, or of an interest therein, the *title* to which, for want of some *piece of evidence*, some *saving knowledge*, which a registration office would have taken charge of and rendered accessible to all persons interested, turns out to be *bad*.

38. II. Case the *second*. — Sufferer, a person who, having paid money for the purchase

of a subject-matter of real property, or of an interest therein, fails of receiving it; he who, in return for the money, has undertaken to cause him to receive it, finding himself rendered, by the badness of his title to it, unable so to do; say, in six words, *a purchaser on a bad title.*

39. III. Case the *third.* — Sufferer, a person who, having paid money on the security of a subject-matter of real property, or interest therein, in such sort that if the money, with the interest due upon it, fails of being put into his hands on or before a certain point of time, the thing itself, or money to be raised by the sale of it, as above, will be put into those same hands, is by that same cause prevented from so receiving it; say, in six words, *a lender on a bad title.*

40. IV. Case the *fourth.* — Sufferer, *a would-be seller* with a bad title; prevented from becoming *actual* seller of it by the *badness* of his *title* to it.

41. V. Case the *fifth.* — Sufferer, a *would-be purchaser*, if prevented from becoming *actual* purchaser by the badness of the *would-be* seller's title.

In these *two last* cases, as well as in the *three first*, suffering has place; and that suffering has *disappointment* for its cause. But, in these same cases, the nature and the immediate cause of the evil are too diversified, miscellaneous, and uncertain, to admit of any more particular description here.

42. Now for the above-mentioned string of preparatory propositions.

I. The institution for the existence and organization of which you are occupied in making preparation, consists of a *building*, or set of buildings, to be employed in the character of a register-office, or set of register-offices, together with an *official establishment* for the carrying on the business by the performance of which the benefit contemplated is designed to be conferred on the several persons interested.

43. II. This benefit consists in the preserving from *deperition*, and keeping in a state of *accessibility* to all persons lawfully interested, a certain class of written *instruments*, or say *documents*, which have been framed for the purpose of affording, upon occasion, sufficient *evidence* of men's right and title to property of a certain description, distinguished by the name of *real* property.

44. III. Of this benefit, the principal, if not the only intrinsically valuable, but at any rate abundantly sufficient, use, consists in the preserving the several proprietors and other persons respectively interested, from the pain of *disappointment*; namely, that *pain*, or say that *uneasiness*, which a man experiences when, without his consent, any thing valuable which he has been in the *habit* of looking to as *his own*, ceases so to be looked upon by him; which said uneasiness has not place in the mind of any person who has not been in that same habit or state of mind in relation to that same thing. "Blessed is he that expecteth not, for he shall not be disappointed," says an addition proposed to be made to the *beatitudes*, if I misrecollect not, by *Dean Swift.*

45. IV. Of these two parts of the institution, neither can be brought into or kept in existence and applied to *use*, without a quantity, more or less considerable of expense in the shape of *money.*

46. V. This money is not obtainable but by means of *taxes.*

47. VI. In so far as taxes are imposed, money is taken from persons without their consent; and thereby, in their minds, a quantity, more or less considerable, of *pain* produced.

48. VII. As to *aptitude.* The more complete the relative aptitude of the several persons so employed, relation had to their respective official operations, the better. So likewise of the dead stock.

49. VIII. To come back to the expense, that *that* and aptitude may be considered in conjunction. The less the expense employed in the purchase of their respective services, so long as that aptitude is not thereby diminished, as well as in the provision made of the *dead stock*, the better.

50. IX. For giving, in the most concise and easily-remembered form, in the compass of *seven* words, expression to both these so intimately-connected positions, existence has been given to this one rule — *Let official aptitude be maximized, expense minimized.*

Now comes the promised TABLE of Objects, and means of effectuation.

I. Object the First — EXPENSE MINIMIZED: — Proposed *means of effectuation*, these —

1. Building, for reception of the stock, *one* and no more than one.

2. Assistant registrars, or say registrar deputes, superfluous none.

3. Of assistant registrars, or say registrars depute, the salaries minimized by competition. And see Object III.

4. Of registrar deputes during the probationary year, the service gratuitous.

5. For an object of reference, *map* of the whole territory: and see Object V.

6. For exemplars of the documents, the *manifold* mode of writing employed: and see Object VI.

II. Object the Second — DELAY MINIMIZED — delay of the service rendered to the suitors: — *Means of effectuation*, these —

1. Attendance uninterrupted — adequate to all demands.

2. Profit to functionaries from delay, none in any shape.

III. Object the Third — APTITUDE of the

several FUNCTIONARIES MAXIMIZED: — *Means of effectuation*, these —

1. Sinister interest excluded, by the complete substitution of *salary* to *fees*: branch of appropriate aptitude thereby secured, the *moral*.

2. Probationership, antecedently to definitive location: branches of aptitude thereby secured, the *intellectual* and *active*.

3. Securities for appropriate aptitude, in *all* its branches, numerous; and effectual (as will be seen) beyond all example.

IV. Object the Fourth—APTITUDE of the MACHINERY MAXIMIZED: — *Means of effectuation*, these —

1. The arrangements regarded by anticipation as being best adapted having been appointed by parliament, head registrar (he being divested of all sinister interest) empowered to make eventually effective amendments, by the light of experience, subject to disallowance by King or *either* House.

V. Object the Fifth — Security for the efficiency of this same process of registration maximized: — *Means of effectuation*, these —

1. Object of reference, in the description given of the parcels, an all-comprehensive *map* of the *whole* territory, as per Object I., exclusive of maps of *districts*.

VI. Object the Sixth — Extent of the application made of this same remedy maximized: — *Means of effectuation*, these —

1. Subject-matters of property (moveable excepted) *all* admitted; copyholds, leaseholds and incorporeal; thence, in correspondent number, the proprietors.

2. Fees exacted or permitted, none; thence the relatively unopulent not excluded from the benefit of the remedy.

3. The *manifold* mode of writing employed, as per Object I.; thence, expense in remuneration of skilled labour saved to suitors, and the *number* of exemplars furnished rendered correspondent to the *demand*.

VII. Object the Seventh — Minimization of the burthen with which the benefit is clogged: — *Means of effectuation*, these —

1. Fees (as above) none. See Objects I. and VI.

2. Means of *communication* for documents and other writings, the *letter-post*; thence, expense of *separate* communication through *skilled labour*, saved.

In relation to these several *means of effectuation*, now follow the promised explanatory and justificative matters in detail.

Now then for these several OBJECTS and *means of effectuation* in detail.

I. FIRST OBJECT to be accomplished — the *Expense minimized*: — *Means of effectuation*, these —

1. Means the first: — Building, for the lodgment of the whole stock — *materiel* and *personnel* (as the phrase is in French) together, — one and no more than one.

Already, if I do not misunderstand the matter, your leaning, gentlemen, is strongly in favour of this maximum of simplicity. Lest, however, after all, the determination should not otherwise be on that side, I will take the liberty of submitting to your consideration, an experiment which, in days of yore it fell into my way to make.

In the year 1796 or thereabouts (the year is not material,) Pitt the second formed a plan, and brought in a bill accordingly, for making provision for the whole pauper population of England, by means of a workhouse, under particular management, in every parish or small union of parishes. I took this plan in hand, and demonstrated that it would not do; for that, besides other objections, the difference in respect of the quantity of capital necessary between that plan and one that I pointed out, would not be less than fifteen millions. With all his faults, — such was the candour and magnanimity of that god of so many idolatries, — he gave up his own plan, took to mine, and a day was appointed for settling the details of it, when it was crushed by a *veto* from on high, the details of which belong not to the present purpose. The demonstration in question may be seen in four successive articles of Arthur Young's Annals of Agriculture. Put together, the sheets, some copies of which he presented to me, constituted a moderate-sized 8vo volume, which I propose ere long to reprint, under the title of *Pauper Management*, prefaced by a history of the above-alluded-to catastrophe.

It will form part and parcel of the history of the war carried on for not less than three-and-twenty years, between George the Third, of blessed memory, and one of his rebellious subjects. I mention thus much, gentlemen, lest, when you read of the capital of fifteen millions left out of his calculation by the heaven-born minister, you should suspect that while speaking of it I was in a dream.

I present to view this incident the rather because in the calculation of the expenses, projectors, however talented, are but too apt to overlook this or that *item*, which, when brought to light, appears to such a degree obvious, that the omission of it becomes a source of no small surprise.

Thus again: when the late Mr. James Humphreys came out with his plan for an inquiry into the subject of real property, the expense of that part of it which had for its object the obtaining no more than one portion of the information requisite, would have amounted to between four and five hundred thousand pounds. In a paper of mine in the *Westminster Review*, is shown how the like information *might* be, because it *had been*, obtained for next to no expense. So again, when Mr. Windsor, projector of the *gas light* system, came out with his proposal, an expense, the mention of which was not to be

round in them, was that of the *pipes* by which this so useful species of air is conducted to its several destinations.

2. Means of minimization of expense the second — minimization of the number of the paid functionaries employed.

Minimization of the number of the functionaries employed? methinks I hear the draughtsman and the supporters of the existing *bill* exclaiming — Minimization of this *part* of the expense? Is that then the utmost that *your* plan does, or so much as professes to do? *Ours* exonerates the public of it altogether: it lays the *burthen* on the shoulders of *individuals;* and *these*, the only ones on whom it ought to press; that is to say, those by whom the accompanying *benefit* is enjoyed.

Answer 1. Applied to the institution in question, this measure of economy has for its ground the assumption, that the institution is of no use; for, in no inconsiderable proportion, those persons in whose instance the demand for the benefit has place, are those who have not wherewithal to pay for it; and if, for the good of the whole community taken in the aggregate, it be desirable, that for the sake of this species of saving, the benefit should be denied to this part of the whole population, so likewise is it desirable that that same denial should have place in the case of all the rest.

2. Then, as to those in whose instance no such complete inability has place, the less a man's ability to bear the burthen is, the more severely is the pressure of it felt by him. Be the price that will be thus set upon the benefit what it may, some there will be by whom it will no more be felt, than by the man by whom a halfpenny is given to a beggar is the loss of the halfpenny; while others there will be on whom it will press with all degrees of pressure, up to that which would be produced by his being deprived of the whole of what he has to live upon.

3. In a word, this assumes the shape given to the remuneration of the functionary to be that of payment by *fees;* and from that mode of payment results an increase given to the expense in another way, which will be brought to view hereinafter under another head; namely, by giving increase to the number of the *occasions* on which the money will have to be paid. Assessed upon the public fund, the burthen presses upon each man's shoulders in exact proportion to his ability to bear it; that is to say, in so far as the system of taxation is what it ought to be.

In another work of mine,* for the accomplishment of the desideratum here in question, — that is to say, the minimization of the number of paid functionaries and thereby of the aggregate expense of that pay — may be seen means applicable to functionaries in general, and accordingly to those here in question, — namely, power and obligation to the principal functionary to locate unpaid deputies in sufficient numbers. What may there be seen is — how the matter may be so managed as that there shall always be *functionary power enough*, and never *more* than enough: such being made, at all times, the interest of the principal, by whom these auxiliaries are located. As to this matter see below.

3. *Third* instrument of minimization applicable to the expense of the institution, competition applied to the remuneration of the functionaries.

If the security for appropriate aptitude on the part of the competitors were in any degree deficient, from this same deficiency an objection might be opposed to the use of this instrument of frugality; but the security which will here be proposed will be seen to be entire, and completely satisfactory; and this being the case, the objection vanishes.

As to any other objection to the application of the competition-applying principle, on those who object to the application of it in this case — on those, if any such persons there be, who approve of it in any other instance — is it incumbent to declare why it is that they disapprove of the application of it in the present instance. He who disapproves of monopoly in any one other instance, let him say on what ground it is that he approves of monopoly in this instance. To be consistent, he must approve of monopoly on the part of dealers, applied to everything in relation to which he here accords it to purchasers: the food he keeps himself from death with, the clothes he covers himself with, the labour by which he makes provision for his several other wants, whatever it may happen to them to be.

Whence then came the banishment of this instrument of frugality from this part of the labour market? Whence but from the sinister interest, to the action of which those on whose will the settlement of the matter has depended, stood exposed: to them belonging the power of location, applied to the official situation to which, on each occasion, the remuneration was to be attached, the higher the remuneration the greater the benefit to themselves: their attachment is to that part of the benefit which was reaped *exclusively* by themselves: not to speak of the benefit produced by the emolument, in its quality of part and parcel of the aggregate stock of the *matter of corruption* — a benefit in which they were but *sharers*.

But (says a common place argument, which, on every such occasion, may be heard from the lips and even from the pens of corruptionists,) screw down a man's remuneration in this way, he will raise it up again by what-

* Namely, the work intituled, "Constitutional Code," &c.

ever instruments lie within his reach. Answer, that has been given over and over again — True, that's what he will do if it be reduced thus low; but so will he, be it ever so high: and the higher it is, the more effective the power — the greater the facility — it gives him for screwing it still higher and higher, till he screw it up to the height of that of a *king;* and to crown all, to that of an emperor. Look to France — look to Louis Philippe with his Civil List of £360,000 for five months — £864,000 for twelve months. Look to the *United States;* compare the £864,000 with President Jackson's £5000 or £6000 a-year.

So, if what is proposed is that the situation, with the remuneration attached to it, be made a subject-matter of purchase, he that purchases (say they) will make the most of what he purchases: just as high as the profit can be screwed up by him, just so high *will* it be.

Such then is the policy of these same enemies of the community and lovers of themselves: what they refuse to make application of, consists of all the several instruments by the application of which the evil is capable of being reduced: what they do make application of, is the sort of instrument by the application of which the evil is maximized.

Thus it is in the case of the most profusely remunerated of all functionaries, and (such in *his* situation is the nature of man,) naturally most unapt in point of intellectual and active appropriate aptitude of all functionaries: by the half million which is openly and avowedly given to him — by this it is that he is enabled to obtain in the shape of patronage — patronage of needless, and to *us*, useless offices, so many millions, which are not openly and avowedly, but at a vast ulterior expense *covertly*, given to him.

To the application made of this rule, principle, and source of economy, one exception, and one alone, there must be. On the occasion of application made of the securities in question, the existence of antecedent *experience* of the conduct of the functionaries in question in that same situation is supposed and is necessary. But, at the outset of the institution, by the supposition, no such experience can have had place. This exception then is a necessary one. Such at any rate will it be pronounced by those to whom it belongs to determine; and advantageous indeed will be the compromise, if with no other than this exception, they can prevail upon themselves, or be prevailed upon, to give their concurrence to this rule.

To the functionaries *first* located in the several situations in question, let them then assign such remuneration as on the score of its being in accordance with the masses of the matter of remuneration attached to the general run of the existing stock of official situations they would attach, were no such measure of economy as this brought to view: much good may it do them: moderate is the boon that can be claimed for them on the score of assured competence, self-denial and disinterestedness.

4. Fourth instrument of minimization applicable — gratuitousness of the service of deputes during the probationary time — say a twelvemonth.

Refuse to see who can, escape from seeing who can, deny who can venture, the efficiency of this test of aptitude. Of those by whom, in any tolerable degree, appropriate aptitude is possessed, who is there that will decline submitting to it? What danger can there be that by his submission to this test, any diminution of the requisite or desirable share of appropriate aptitude will, in the instance of the functionaries located on these terms, be produced?

Nor less favourable to the interests and feelings of the *individuals* in question will these arrangements be, than to the interest of the *public* in respect of the aptitude of its functionaries. By no individual, who in his own eyes is not able to abide this test — by no individual who is not desirous of its being so — will application of this test be made. Made then, to the satisfaction of all persons concerned, this same application of this same test will be. And on the part of each and every one of those who do not abide it, how small, in comparison will consequent suffering be? "The plan does not suit me," says the man: — or, "I do not choose to serve in it on such terms:" and, of either of these assertions, in what way and by whom, can the verity be contested?

But under *Matchless Constitution*, of those on whom it depends it is the interest that throughout this as well as every other part of the official establishment, the quantity of appropriate aptitude rendered necessary on the part of the several functionaries, should be not the greatest possible, but the least possible, consistently with the keeping the government, and with it their sinister profit in all shapes, from falling to pieces: for, the greater the degree of aptitude exacted and rendered necessary, the greater will be the odds against their several relatives and other *protégés*, — the greater the chance that by their being found not to be possessed of it in so high a degree as their several competitors, they will stand excluded.

II. Second Object to be accomplished, minimization of *delay* in the service rendered to each several suitor.

1. Means of effectuation the first — Assistant Registrars, or say Registrars Depute, superfluous, none.

The number of the functionaries employed

being given, the degree in which the object now in question is accomplished, will be proportioned to the quantity of attendance exacted of each such functionary: that is to say, as the number of the *days* on which attendance is paid by him in each year, and the number of the *hours* during which such attendance is paid by him on each such day.

As to the number of each man's days of attendance in the year, deductions from the whole number of days in the year are called for, not only by the need of attendance on his *private business*, but by what is due to *health* and *comfort*, as well as by what is understood to be due to religion.

On the score of religion, allowed to each functionary days of non-attendance — say the fifty-two *Sabbath* days, with the addition of *Christmas Day* and *Good Friday*.

Hours of attendance exacted, all those on which suitors in general are inclined to repair to the spot for the purpose of receiving the appropriate service. A precise standard of reference is presented to view by the greatest number of hours habitually exacted at the hands of any functionary in any of the existing public offices.

For the number of vacation days to be allotted for the purpose, this same standard of reference may serve: say as many consecutive days as there are in [four] weeks; subject to the being, in the instance of each individual, dispersed, and placed in different parts of the year, by agreement amongst the several individuals concerned.

In addition to these ascertainable times of absentation, the accidental occurrence of sickness suffices to demonstrate, to any rational mind, the unreasonableness of any reliance on altogether uninterrupted attendance. To *Matchless Constitution* alone does it belong to expose the *most* important part of the business, as in the case of Honourable House, to be put to a stand by sickness on the part of one of its members.

Note here that, in this case as in all others, if for any part of the service rendered by the functionary, instead of or in addition to salary, remuneration were appointed or left to take the shape of *fees*, the purpose here in question will be but too largely frustrated. For multiplication of the fees, maximization will be made of the *number* of the times, and thence of the aggregate of the times, of attendance: with *intervals* between the several times, — and thence of the quantity of delay which each business will experience. This will already (it is hoped) be found sufficiently evident; if not, it may be seen enlarged upon in the work intituled, *Petitions for Justice*, &c.

Note also, that if to the number of the functionaries adequacy be secured as above, a correspondent relaxation in the severity of the obligation of attendance, may be effected without any material addition to the expense. And then it is that, through the medium of the deputation system, the quality of elasticity (so to speak) may throughout the whole field of operation be given to the provision made for the service of public functionaries; always close fitting; always enough, never too much.

III. THIRD OBJECT to be accomplished — on the part of the several functionaries, aptitude maximized.

Means of effectuation, this one.

In my Constitutional Code, in relation to each of the several official situations belonging to the several departments — legislative, executive (administrational included,) and judiciary, — under the head of *Securities for appropriate aptitude*, provision is made for the possession of that same so highly desirable quality by the several functionaries therein respectively located. Of these same securities, some there are which, being applicable to no other species of constitution than that of a representative democracy, are foreign to the present purpose. On looking over the list of those same *securities*, and more particularly the list of those applicable to the judiciary department, selection has been made of these; and, after the necessary modifications made of them, to fit them for being applied to the sort of office here in question, the list of them is as follows:

1. After the first and original appointment, or say *location*, exclusion put upon all candidates for the situation but such as, in that of registrar depute, have given proof of appropriate aptitude in all shapes, by the exercise of the same functions under the superintendence of a registrar principal.

2. The obligation contracted by the utterance of an *inaugural declaration*, to be pronounced antecedently to entrance into office; and the sense of *responsibility* increased in proportion to the *publicity* of it. As to this, see Constitutional Code, ch. xii. JUDICIARY, § 29, *Judge's Inaugural Declaration*, when published; and, as a model, in the already-published volume, Vol. I. ch. vii. LEGISLATOR'S INAUGURAL DECLARATION.

3. The interdiction put upon all emolument other than that which in the eyes of all men stands attached to the office by law. See above, OBJECT I. Expense minimized — Means of Effectuation, 3. Remuneration superfluous, none: OBJECT VI. Means of effectuation, 2. *Fees, none* — and OBJECT VII. Burthen minimized: means of effectuation, 1. Fees (as above) none.

4. In particular, interdiction of all emoluments increasing in amount with the increase in length and number of instruments deposited and searched for, and searches made, at the expense of suitors.

5. Single-seatedness of the office: thence,

integrality and undividedness of whatever *responsibility*, legal or moral, stands attached to the conduct of the functionary in the exercise of the duties of this his office. As to this, see Constitutional Code, Vol. I. ch. ix. MINISTERS COLLECTIVELY, § 3, *Number in an office.*

6. In the eyes of all persons present in the registration-office in quality of *actors* (as they may be called) on the registration theatre, exposure of the tenor of the inaugural engagement, as above.

7. Of his attendance at the seat of duty, the constancy secured by the connexion established (if found or deemed necessary) between attendance and the receipt of official pay. As to this, see Constitutional Code, Vol. I. ch. vi. LEGISLATURE, § 20, *Attendance and Remuneration how connected.*

8. Dislocability of the registrar principal by the king or either house of parliament: by the king, to wit, by an order countersigned by the Lord Privy Seal, with special reasons assigned; by either house of parliament, without any such reasons.

Question 1. Why countersigned by a single high functionary, instead of being made an order in council? — *Answer.* For responsibility; for when, instead of an individual, the so-called burthen of responsibility is laid on a multitude, the pretended burthen is an air-balloon, and the ceremony a farce.

Question 2. Why give this power to the Lord Privy Seal?—*Answer.* On the presumption that the functionary to whom the duty of countersigning the instrument of location is allotted, is the Home Secretary. The essential point is, that the effective power of location and that of dislocation should not be in the same hand. Why? Because the inducement, whatever it were, by which the location had been effected, would, generally speaking, be sufficient to prevent the dislocation, howsoever merited, from taking place; for, by every consideration by which human conduct is commonly on such occasions most powerfully influenced and determined, the *patron* would stand engaged to continue his protection to his *protégé*.

Question 3. Why not give to the Lord Chancellor either the locative power or the dislocative? *Answer.* Because, judging from his relative situation, and from past experience, he would abuse it. It is of the situation, of course, that I speak, not of this or that individual, to the exclusion of others. Not one of you, gentlemen, without fear of the imputation of wishing to give offence, not one is there of you, I can venture to assert, to whose conviction it has not been manifest what injury has been done by equity judges under the pretence of justice, by counteracting the intentions of the legislature, as manifested on former occasions, by the institution of register-offices, involving titles in clouds of factitious uncertainty for the sake of the litigation and the profit wrung by them and their subordinates out of the expense.

On this, as on so many other occasions, need I add, gentlemen, that it is in the fee-gathering system, the syphilis of the law, that all this corruption has its root.

A set of securities, such as the above — this, if anything, is what is meant by the word *qualifications*, application of which having been customarily made when a new office has been established, has of course been made in the present instance.

During the period in which, by reason of the novelty of the institution, there has not been time sufficient for bringing to view the result of the test of appropriate aptitude afforded by service performed in the very occupation in question, an idea which, since the publication of that same code,* has occurred to me is this; namely, that to keep off unapt aspirants — to keep off all those men who in such numbers regarding themselves as being secure against the being obliged to quit, are so ready, for the sake of the emolument, to take upon themselves the duties of the office, whatever it be, — the first year's service should be performed gratuitously. On this plan, a man who felt himself unfit for the office, would be absolutely without motive for seeking it, or so much as accepting it, even if offered: whereas, in the present order of things, destitution for other cause than judgment of *guilty* according to legal forms on conviction of a criminal offence being morally impossible, the consequence is, that in no other shape is any degree of inaptitude sufficient to keep a man out of office, and preserve the public service from the evils to which his incapacity subjects or exposes it.

So much for that which *ought to be:* now for that which *is.* In the character of *securities for appropriate aptitude* on the part of the class of functionaries in question, the supposed *securities*, *customarily* provided under the name of *qualifications*, may, without fear of refutation, be pronounced worse than useless; and the supposed securities provided in the present instance, are of the sort of those which are thus customarily provided.

Of these same securities there are *two:* namely, 1. Aggregation of the candidate in question to a certain class of persons who are occupied in exercising, or endeavouring to exercise a certain profit-seeking profession; 2. Bearing a part in a certain ceremony called the *taking an oath.*

Neither the one nor the other of these supposed securities are *means* in any the smallest degree, conducive to that same declared end.

* See (when published) *Dispatch Court Bill*, § xi. *Auxiliary Judges.*

1. The class of men to which the candidate for the office in question is regarded to have been aggregated, is that of *barrister at law*. But, with the exception of *age*, to the power of aggregating a man's self to that same class, no other condition is necessary than the having eat or appeared to eat a certain number of dinners in the same large hall in which other men are, at that same time, engaged in that same occupation.

Among the writings which have for their object the contributing to the instruction of these same men, is one that has for its title, "Jocular Customs of divers Manors." One of these same customs consists in the emission of gas from the intestines, on certain solemn occasions, for the entertainment of the company assembled. The *egesta* in this *latter* case would not, in the character of a *security for appropriate aptitude*, constitute a less appropriate or less efficient one, than is furnished by the *ingesta* in the former case.

2. Now as to the *oath*. As in the nature of the case, so in practice, there are two kinds of oath — the *assertory* and the *promissory*. The one here in question belongs to the *promissory* sort. In the case of the assertory oath, in my *Petitions for Justice*, the worse than uselessness of it has been held up to view, and proofs, uncontested and incontestible, may be there seen of its being so: and, with no less truth may these same proofs be seen applying to *promissory* oath, in the *present* as well as in all *other* cases.

A supposed security which is inefficient, is not negatively and simply useless; it is positively much worse than useless: it is a source of delusion, producing confidence where confidence has no ground to stand upon. So far as it is a security for *any* thing, it is a security for relative *inaptitude*.

On a similar occasion, to Sir Robert Peel, when home secretary, were observations to this same effect presented: presented, but without effect.

It pains me to think, and to have to say — that, on the present occasion, these same observations have been equally unavailing.

Against truths so incontestible and so important, the eyes of *public opinion* will not *always* remain shut; and, no sooner do they open, than any draughtsman, in whose draught either of these same sham securities has place, will be covered with a wrapper of ridicule, in which it would pain me to see enveloped any of the gentlemen to whom I have the honour thus to address myself.

IV. Fourth Object to be accomplished — on the part of the *machinery* of the system, aptitude to be maximized.

Means of effectuation, these —

In the text of the act, do whatsoever antecedently to experience, presents itself as capable of being done towards the accomplishment of this desired purpose. But in relation to the system thus formed, give to the chief registrar the power from time to time to make whatsoever amendments shall, in his eyes, have afforded a promise of being conducive to that end; subject to disallowance either by the King alone, or by either of the two Houses.

For the giving of this initiative and defeasible power of legislation, the reason is at once simple and conclusive. For their guidance, no experience whatsoever will the framers of the act have had, whoever they are. Full experience will have had this same functionary, to whom the trust is thus proposed to be confided. True it is, that if of any other of the arrangements made by the act, the effect were to give to him an interest in the deterioration of the system, together with the power of promoting, at the expense of the universal interest, that same particular and sinister interest, a well-grounded objection would thus be opposed to this same proposed arrangement. But, 1. in the first place, by what has been proposed under the last preceding head, he will be seen to stand effectually purged of all such sinister interest. 2. In the next place, an additional and as yet unexampled security against evil in that shape, is provided by the power thus given to each one of the three component sharers in the power of the supreme legislature.

In several unconnected parts of the bill, as it stands at present, power of making regulations respecting the details of the business is conferred on this same functionary; but, as to the matters in relation to which this power is given, nothing else is done, in and by the bill; nor is any power of *disallowance* given to any authority other than that of the whole legislature. Between the cases in which without inconvenience, power of regulation by the hands of an authority other than the legislature may, and those in which it cannot be given without preponderantly evil consequences, it would not (it is imagined) be easy to draw the line; by the expedient here proposed, all need and all use of any such line are done away.

Eminently unpalatable to the taste, because so eminently and equally detrimental to the particular interest of some of the opposers of the principle of all-comprehensive codification, would the here-proposed arrangement be: dried up by it in no inconsiderable degree, would be the source of the indefinitely lengthy train of amendments upon amendments, with the profit of the branch of amendment-making, which this branch of *Matchless Constitution* has contrived to put into their hands; a profit, which cannot but have had no inconsiderable share in the producing of the opposition which continues to be made to the only arrangement by which anything like complete effect can

be given to any the most salutary and indispensable arrangements, or individuals be preserved from punishment, for the not doing of those things which it has thus been rendered, and continues to be rendered, impossible for them to do; for how great is the evil, which, in their eyes, would be too great for the whole community to be afflicted with, for the sake of putting any the smallest sum into one of the noble or right honourable pockets? how extensive the conflagration that would be too extensive to be made for the purpose of roasting for him a single egg? But, by a reformed parliament, let us hope, howsoever according to custom the malefactors may be left comfortably wrapt up in impunity, the maleficent practice may be put a stop to.

Of the appropriate and best adapted mode of making amendments in existing regulations, by whatsoever authority made, a description may be seen in the part already published of the proposed Constitutional Code; namely, in ch. vi. Legislature, § 29, *Members' Motions;* and of the mode in which, without detriment to the supreme power of the legislature, alterations may be made by authorities subordinate to it, an exemplification is given in the as-yet-unpublished part, namely, vol. the third, ch. xii. JUDICIARY COLLECTIVELY, § 19, *Judge's contested interpretation-reporting function;* § 20. *Judge's eventually emendative function;* to which reference is made in ch. vi. Legislative, § 34. *Securities for appropriate aptitude*, art. 44.

Having, so far as depends upon me, introduced and applied to this same business the hands which, by situation, will be in the highest degree well qualified for the performance of it, I shall there leave it, and save to myself the time and labour of framing any proposed arrangements of detail for the purpose in question, and to the gentlemen I am addressing, the time and trouble necessary to the taking of any such arrangements into consideration.

V. FIFTH OBJECT to be accomplished — security for the efficiency of the process in question — namely, the process of registration, — maximized.

Means of effectuation, an appropriate all-comprehensive *map*.

Altogether indispensable seems to me to be this muniment; without this for an object or standard of reference — without such an anchor as this to be fastened to, — surely to a vast proportion of the landed property in the kingdom will the title remain floating in the ocean of uncertainty.

In one part of this vast aggregate, the assurances have maps of correspondent extent for their accompaniments; in another part in the vast remainder, no such *means*, or say *instruments* of identification, have place. If necessary or useful in any one instance, where is the instance in which it can be otherwise?

An all-comprehensive original being thus formed, then, of the several parts of it should be taken a copy of each of the several *parishes* contained in the whole territory; with correspondent provision for *extra-parochial* places.

But here a two-fold difficulty presents itself: —

1. Cause of the difficulty, in the first place, the irregularities in the surface of the earth. Exhibited by this surface are all imaginable diversifications of curvature; whereas, in this graphical representation of it, on the only surface which it presents to view, no one of all these diversifications is exhibited; the surface is, the whole of it, in one and the same plane.

2. In the next place comes the entire figure of the earth, considered in its character of a *solid* body — an oblate spheroid — the mode of curvature, the form of its divergence and aberration from a right line, not *uniform* throughout, as in the case of a *sphere*, but *varying*.

General consequence, in a degree more or less considerable, incorrectness in a representation given of the portion of land in question, in every map that ever has been, or ever can be, made of this same surface.

Consequences in *particular*, these.

Where there are maps, in the case of each division of the surface, say in the case of each *mile*, the quantity of the land given by the portion of the all-comprehensive map — the *general* map — would not agree with *that* given by a *particular map* of the same spot, taken without reference made, and regard paid, to the all-comprehensive map.

2. — The number of the products of the next subdivision, say the *acres*, stated in the *title-deeds* as belonging to each proprietor or set of proprietors, would not agree with the number of acres represented as belonging to him or them in and by the corresponding portion of the all-comprehensive map.

3. — All round each mile exhibited by the portion of an all-comprehensive map would be a sort of fringe or *border* which by that map would be represented as belonging to one proprietor or set of proprietors, while by the particular and separate maps, together with the number of the acres as stated in the assurance, they would be spoken of as belonging to a different one.

In every instance in which the same mile is parcelled out between proprietors or sets of proprietors more than one, each would, in and by the number of acres stated in the assurances as belonging to him, together with the maps, if any, with which those same assurances were accompanied, be represented as having a larger part in it than he really has or could have; each would therefore be in

the assurances *stated*, and in the accompanying map or maps *represented*, as possessing a quantity more or less considerable, which he could not possess but at the expense of the part possessed by the other or others; and thus in every part of the *mile* there would be a portion more or less considerable which would be represented as belonging to two different proprietors at the same time.

69. In relation to this, it will naturally be observed that, by this discrepancy, no actual collision, litis-contestation, or inconvenience, in any shape, is known to be produced: for that by the natural boundaries which have place upon the land itself — that is to say, the hedges, ditches, fences, palings, and the walls, — what portion it is that belongs to each such proprietor, or set of proprietors, is indicated and demonstrated beyond dispute.

True, in so far as *boundaries* of any sort have place, this cause of doubt and dispute is obviated and excluded. But, in every acre in which boundaries are wanting, this remedy to the deficiency has no place.

What then would be the remedy?—*Answer*. It would be thus expressed. Take an account of the number of feet and inches in the actual occupation of each proprietor, or set of proprietors, or their respective lessees: divide, then, in the map, the whole mile into such or such a number of parts or portions: divide the correspondent mile in the all-comprehensive map into that same number of parts or portions situated with relation to one another in the same manner. In so doing, mark their several proprietors as exhibited by each one of the correspondent portions in the all-comprehensive map, the same as those in those which are given by the *number of acres*; and so on in case of any ulterior or minuter division of the land among different occupiers, as in the case of *towns*.

From the adjustment thus made would result the *demarcation* proper to be made in the correspondent portions of the all-comprehensive map; and where, on the land itself, between one property and another, there is not any actually existing boundaries, the lines on which the boundaries ought to be placed.

In the country (or say in French, in the *plat pays*) differences of no greater an amount than that of a few feet would not, generally speaking, be very material. Not so in towns, or in the precise spots anywhere where fixed fences of any kind, more especially those composed of brick-work or cemented stone have place, a man whose fence in any direction had been too advanced, would have to pull it down, and to be charged with the correspondent quantity of expense; and so in the case of water-courses. Other cases might be brought to view; but for the particular example in proof of the importance of the general observation these may suffice.

Think of the expense which, by this course, would have to be produced in the case of a church, or any other similarly expensive public building!

On the continent of Europe, in countries more than one, the thus proposed sort of muniment has actually been brought into existence, and continues to be beneficially employed.

In this country, among the *pamphlets* which of late have been published on the subject of *assurances*, several there are in which this so essential an auxiliary to the efficiency of the main institution is recommended.

In those foreign instances, the all-comprehensive *map** forms an appendage to a correspondently all-comprehensive *cadastre*, as it is called, containing a body of information, of which that which is exhibited in and by the sort of muniment called in English, a *Terrier*, forms a part.

The all-comprehensive muniment called *Doomesday Book*, framed so early as the eleventh century, a short time after the Norman conquest, is a sort of inchoate exemplification, though imperfect and inadequate in the degree that might be expected at so early a stage in the progress of society.

Trifling, in comparison of the usefulness of it, would be the expense of providing this same instrument of general security. For the single purpose of defence of the country, by means of fortifications, against invasion by a foreign enemy, a document of this sort, instituted at public expense, by order and under the direction of the Board of Ordnance, is in considerable advance. Of the total number of counties (in England and Scotland 52,) 18 or 19 are already on sale: among them the two largest, — namely Yorkshire and Devonshire.†

For giving facility to the recurrence made to a representation of this sort, a species of indication, applicable to any map whatsoever, has already been employed and is actually in use. A map with this improvement in it lies before me. It is a map of Paris. The whole surface is divided into parallelograms by lines composing a sort of *lattice-work*. In one direction, these parallelograms, as they follow one another, are distinguished and designated by the letters of the alphabet, *a*, *b*, *c*, &c.; in the cross direction, by numerical figures, 1, 2, 3, &c. In the margins are inserted, one under another, in alphabetic order, the names of the streets and other divisions, preceded

* *Cassini* is the person of whom the muniment of that sort constructed in France bears the name: *Charte Trigonometrique* (if I am not misinformed) the name of the muniment itself.

† If I am not misinformed, offer has been made, either to complete that survey or to make a new one, and construct the hereby desired map for £50,000.

respectively by the letter and the figure, by the conjunction of which the place or places which the reader is looking for may almost instantaneously be found.

Over and above the information, of which the several parishes and extra-parochial places in the territory in question are the subject-matter, this same document might be made to serve for supplying the like information respecting the division styled *Manors*.

Between parishes on the one part, and manors on the other part, various are the relations that have place: —

1. In some instances they coincide.

2. In other instances, manors more than one are contained, every one of them in an entire state, in one and the same parish.

3. In others again, parishes more than one are contained, every one of them in an entire estate, in one and the same manor.

4. In others again, in which manors one or more than one are contained in an entire state in one and the same parish; to these integers stand attached fragments more than one, which extend over parishes more than one.

5. And *vice versâ*, in other instances in which parishes one or more than one are contained in an entire state in manors more than one, to these integers stand attached fragments one or more than one, which extend over manors more than one.

Various are the signs and devices, by any one of which this relation between the sites of *parishes* on the one part, and *manors* on the other part, might be exhibited to the eye and held up to view.

As to the particular nature, the need of, and benefit derivable from, the ascertainment of the several manors in existence, and the mode in which the obtainment of this information may most effectually and commodiously be accomplished, it belongs not to the subject of *registration*; but some suggestions of mine in relation to it, may perhaps find their place on another occasion under the appropriate head.

"Give me," said Archimedes, "give me but another place to stand upon, and I will give motion to the earth." "Give me," say I, "give me but a map to point to, and I will give rest and quiet to 'all that inherit' this our portion of the earth's surface."

VI. SIXTH OBJECT to be accomplished — Extent of the application made of this same security, maximized.

If the institution is productive of *benefit*, who are they who in respect of justice ought to be left destitute of it? — a question this, which assuredly it is incumbent on him to answer, if any such person there be, by whom opposition is made, in any shape, to the utmost possible extension that can be given to this same benefit.

Exceptions, — always excepted are all cases, if any such there be, in which by the *burthen* imposed in all shapes taken together (pecuniary expense included) the *benefit* will be outweighed. But this same burthen — on him by whom the existence of it is alleged, lies the obligation of making proof of its existence; and this obligation he will fulfil, on pain of seeing his silence in relation to it regarded as a virtual confession of the groundlessness of the opposition made by him to the proposed measure.

Means of effectuation, these —

1. Subject-matters of property (moveable excepted) all admitted: copyhold, leasehold, incorporeal; thence, in correspondent numbers, the proprietors.

Is it that the expense is such as would outweigh the benefit? On the contrary, the expense would be next to nothing. Such it was, for example, 1. In the case in which the body of information obtained for the use of Parliament had for its subject-matter the population of England, Wales included.* 2. In the case in which it had for its subject-matter the provision made throughout for the education of the people in Scotland.

Second means of effectuation —

2. Fees (as above) none; avoiding to give to any part of the remuneration the shape of fees.

Question — Why not? *Answer*, short and conclusive; reasons the following: —

1. To all who are unable to pay the price thus set, the service is denied: and, in every instance in which the evidence which by that service should have been preserved and rendered accessible, is for want of such service rendered unobtainable, justice itself is thereby denied.

2. To all those to whom, whether in quality of *incumbents* or in that of *patrons*, in the whole or in any part a profit is suffered to be reaped from this source, an interest is given, and *that* a but too efficient one, in maximizing the amount of it.

The *modes* in which this increase is given to it are these — 1. Increasing the number of the occasions on which each fee is exigible; 2. On each occasion, increasing the quantity of the fees thus exigible; 3. In the case where the service consists in copying a written instrument, or performing any operation in relation to it, and the amount of the fee or fees increases with the length of the instrument, increasing the length accordingly; 4. If to the rendering of the service a journey is necessary, giving increase to the number of such journeys, and to the length and expensiveness of each.

Thus, upon every occasion is addition to an unlimited amount made to the *expense*.

* See Return intituled Parish Registers; Honourable House papers, date of order for printing 25th and 30th March 1831, No. 298.

3. So as to *delay*; where and in so far as the means employed for making addition to the profit consist in making addition to the number of the occasions on which the fee or fees are exigible, a means contributory to the effect is the minimising the quantity of the service on each occasion performed, that the number of successive days on which it comes to be performed may be maximized: here then there are so many intervals of delay produced. Moreover, in instances to an indefinite number, so it is that by addition made to the length of the interval between occasion and occasion, addition may be made, and accordingly is made, to the number of the occasions on which a fee or fees are exigible, and accordingly exacted.

4. When, and in so far as this is the shape in which the remuneration has place, the *amount* of it is in a perpetual state of uncertainty; and, whatsoever be the most proper amount, from this same proper amount it is continually divaricating; being almost always, and to an indefinite extent, either too great or not great enough: at one time the public is suffering by the excess; at another time the functionary is suffering by the delinquency.

5. When this is the mode of payment, the amount of the emolument and the sources from whence it flows, are kept concealed from the public eye; and the application of the check which by that all searching instrument would be opposed to abuse is thus averted.

True it is, that by the institution of the *fee-fund* already mentioned, the efficiency of the inducement to make addition to the expense is more or less diminished, and may even be extinguished altogether. But of its being extinguished altogether, there can be no adequate ground of assurance. For so long as by and from the hands of individual suitors benefit in any shape is expressly allowed or may be received without danger, so it will be; and however strong, and in appearance sufficient, the door may be which is shut against it, crevices will be found or made in this same door, and at these crevices emolument will flow or ooze in.

True it is again, that saving the above exceptions, a limit being thus put to the amount, expense in excess — in one word, *depredation* — is so far successfully obviated. But the eye of the public being thus excluded from the scene, abuse in other shapes is thus left without controul: for example, that oppression, which, without benefit rendered by it in any other shape to the oppressor, may be practised for the gratification of pride or enmity.

In a word, in no shape whatsoever will benefit be shown to flow from the giving this shape to the mass of official remuneration, or any part of it.

For the producing of a *semblance* of benefit — for the producing in the mind of the public a notion of the existence of benefit in some shape or other, — the word *alacrity*, or some equivalent locution, has been employed. But by no person has any attempt been made to show — by no person will any successful attempt be made to show — that benefit in any *determinate* shape has ever been experienced by any person from this source, nor how it is ever likely to be experienced.

In the case of the *fee-fund*, completely is the door shut against this supposed benefit. Emolument, none; alacrity, none. The sole assignable cause ceasing, so does the effect.

Put aside the *fee-fund*, thereupon comes into consideration the nature of the service in the several shapes in which remuneration in this shape is desired to be attached to it. Let any one by whom the benefit is supposed to have place, look into the service in each case, and say how it is that from the attaching to it remuneration in this shape, benefit, in the alleged shape or any other, can be seen to follow.

Let him look out for the several *interessees*; for the parties whose interest is any way affected: these he will find to be on the one part the several suitors, who, in person or at a distance, have need to hold intercourse with the several functionaries; on the other part, those same functionaries; and as to the *suitors*, they will be seen to be either — 1. Persons applying to have their documents or information thereof received into the archives of the offices; or, 2. Persons having need, or being desirous of making inspection into or inquiry concerning the contents of those same archives.

True it is that under the *fee-fund* system, while the functionary is secured against *loss*, he has, in some cases, a chance and hope of *profit*; and in that hope a source of *alacrity*. But what an atom of good is this to set against the weight of the evil which has been shown to have place in the other scale!

Note that for the tutelary inspection performed by the eye of public opinion, a continual demand will be created by the danger lest, by a conspiracy between the functionaries on the one part, and solicitors or other agents of suitors on the other part, additions be made to expense, and for that purpose to delay, as above.

Shocking, in the extreme, to the delicacy of gentlemen in both these situations will, of course, be any such suspicion. But what has happened once may happen again; much more what has had place universally as well as constantly. How it is that by a conspiracy between the species of judges styled *Masters in Chancery* on the one part, and the solicitors of parties on the other part, may, to an enormous amount, have been habitually,—under and by virtue of the matchless corruption

engendered and fostered by Matchless Constitution, — a pitiless extortion obtained from suitors on pretences knowingly false, and justice thereby to all but the very few denied, and to the few sold, has now not only been completely authenticated, but rendered universally notorious. And whether the fountain of this corruption be yet dried up, let any one who is so minded speak.

On this subject, matter may be seen in various works of mine, but more particularly that which is entitled "Justice and Codification Petitions," &c.; for on most points close is the analogy between the sort of official service by which what is called justice is administered, or professed to be administered, by the judges and their subordinates, and that by which pre-appointed written evidence is registered. The case is, that the sort of service rendered by the functionaries belonging to a register-office of the kind in question, is, as elsewhere observed, subsidiary to the sort of service rendered by the functionaries who are considered as belonging to the judiciary establishment, and is liable accordingly to abuse in the same shapes produced by the same causes.

3. The *manifold* mode of writing employed: thence (besides the production of other beneficial effects to a vast amount) by reduction made in the expense, contribution made to the maximization of the number of the persons to whom the benefit of registration is imparted.

In an essay of mine on the subject of the late Mr. Humphrey's work on *Real Property*, is contained a description of this invention, with a detailed explanation of the uses to which, in the field of *registration*, it is capable of being applied. This essay made its appearance in the form of an article in the Westminster Review, No. XII. for October 1826; and, having reserved some numbers for gratuitous distribution, I took the liberty of presenting a copy to each of the gentlemen to whom, in their quality of Commissioners of Inquiry into the Law of Real Property, this paper is addressed. Of all these copies the receipt has been acknowledged.

Of a contribution so highly important as this invention seemed to me to be to that service to the cause of justice, the conferring of which was the purpose of the commission given to them, to find no notice taken was to me a disappointment of no ordinary severity. But, at present I have in hand a security for the cognizance which they will take of it; I mean, the engagement which I set out with begging their attention to — an engagement, fruit of that public spirit by which they stand so eminently distinguished — I mean the engagement to give publication in their reports, to whatsoever suggestion I shall have submitted to them for that purpose.

Here follows, then, of that same article, such part as regards the *manifold* mode of writing. [*Here follows the passage, from* "Now as to Registration" *near the end of* p. 405, *to* "Marriage Settlement," *near the beginning of* p. 408, *antea.*]

Gentlemen, you have read what is above. I now call upon you — I hereby call upon you — either in your report or proposed law, to give to that instrument of justice and security against fraud on one part, and ruin to countless individuals on the other part, the attention and employment so incontestibly due to it, or *if not, to say why not;* for, on the score of conciseness, this locution I am content to borrow even from the judicatories which by so sad a misnomer call themselves *Courts of Equity.*

Yes; fixed upon you already is the public eye; and under the sharpened eye of a reformed parliament, fastened upon you it will be with unprecedentedly searching energy.

Pretences, indeed, I have heard — reasons I will not call them — the name of *reason* I will not profane with them — *pretences*, then, I will call them; but such pretences — I am ashamed to think of them. I am ashamed to think from what lips it is that I have heard them. Name those lips I will not: they were such from which I should have hoped for better things. "Of any such number of copies (said the voice) — of any greater number of copies than are at present in use there is no need. The remuneration for skill in a laborious profession ought not to be cut down too low." Then there is the *paper* — the paper not white enough — the ink not black enough. In a word, the thing was (I found) an innovation — the offspring of theoretical fancies — instead of conformity forming a perfect contrast to the precious fruit of ancestor-wisdom — the existing practice. As to practice, true it is it had already been in use for years. In use? — but with whom? Is it for official dignity to put itself to school? — to school? — to the school of a newspaper?

So much for the arguments against the use of this instrument of security against forgery and of reduction of expense. Now for some matters of fact, some states of things, in favour of it.

1. First, as to the notion about *uselessness.* I turn to the masterly and admirably-instructive work, the gratuitously-distributed volume of one of your number, Mr. Tyrrell, intituled, "Suggestions to the Commissioners appointed to inquire into the Law of Real Property." In it I read the following passages: —

Page 263. "If it be thought improper to take the custody of *wills*, which may include any personal estate, from the Ecclesiastical Courts, *office copies* of them might be registered upon being authenticated by an affidavit made by the officers who have examined them,

and heavy penalties should be imposed upon them in case of negligence in overlooking a mistake. *The errors in the official copies made at Doctors' Commons are so frequent*, that few counsel will venture to advise upon an obscure will without requiring to see the original, or requesting the solicitor to ascertain the accuracy of the copy. I have met with several instances of important mistakes. In one office copy which was examined with the original by my desire in the last year, four verbal errors were found in about as many lines, every one of which altered the interest of the devisees."

Page 264. Speaking of Judgments: "They are not binding, under the present act, upon lands in a register *county* until they have been registered in that county, and in like manner they should be required to be registered separately with respect to *every different county* in which there may be estates intended to be charged with them, and not to be effectual as against *other securities or assurances* of lands in such county which may have been previously registered."

That which it seems clear to me was, on this occasion, contemplated by Mr. Tyrrell, is — an indefinitely repeated process of registration; and, if this be really what was meant by him to be proposed, the consequence is, that in relation to the demand it presents for the manifold mode of writing, it makes no difference where the scene of the operation lies: whether in one and the same edifice or in so many different edifices. I say in so many different edifices, or at least in some considerable number of different local edifices: for, as between the one plan and the other, the option is (in p. 274) stated by him as hanging nearly *in equilibrio*.

Page 275. "An official copy of any deed, will, or other document might be given to *any* person entitled to an interest in the estate, and might be signed by the two clerks, by whom it may have been examined with the original, and who should be liable to a penalty for every mistake in it."

So says Mr. Tyrrell. Now then for a few questions to him: —

1. To the number of the *persons* to each of whom it may happen to have an interest in this same estate, what is the limit that can be set?

2. Accordingly, what is the limit that can be set to the *number* of the *copies* which on this plan might be needful? with a fee for each? — a fee increasing with the length of each such copy?

3. Or to the number of the fees, payable in respect of these proposed *double* attestations?

4. Or eventually to the number of the *mistakes* to which it may happen to have been made, with fees for the several persons employed in the correction of those same mistakes?

Not to speak of the quantity of time consumed in the discovery of the *error*, and the applying the *corrective* to it.

5. On the supposition, that in lieu of the ordinary mode of taking *copies*, *exemplars* — all of them equally entitled to the appellation of *originals* — were taken in the manifold way, what possibility would there be of any *one* such mistake?

True it is, that, supposing the number of such exemplars to exceed 14, there would not be a possibility of furnishing an exemplar to each of the persons in question, without the necessity of a transcript from the original set of exemplars; in which extraordinary case a possibility of mistake would have place; and perhaps it might even happen that the number in which in this case the marks were sufficiently clear, might not be quite so great as that of the *copies* taken. But in this case nothing could be easier nor more efficacious than the remedy: namely, a few words written on one of the leaves of the ulterior *batch* or *batches*, stating them not to belong respectively to the *first*.

Page 273. "The duplicates of registers of births, marriages and deaths, should be kept in the public office for the county in which they may be made."

To this passage applies with equal propriety the observations made on the passages in p. 263 and 264; in which observation is stated the ground on which I concluded that what he assumed the existence of was, on each occasion, a not improbable demand for indefinitely large numbers of copies.

Page 276. "An official copy of any deed, will, or other document, might be given to *any* person entitled to an interest in the estate, and might be signed by the two clerks by whom it may have been examined with the original, and who should be liable to a penalty for every mistake in it."

Thus far Mr. Tyrrell. Now then say I. — Where is the man that will undertake to set any and what bounds to the number of the copies which for this purpose it may happen to a *will*, for example, to present the need of, with the skilled labour necessary to the examination applied to *each* of them? that skilled labour to the inadequacy of which to the purpose of preventing evil consequences to an indefinite extent, you have just been seeing him bear such ample testimony? On the other hand, see how the case stands on the supposition of the writings being performed in the manifold mode: 8, 10, 12, or even if necessary as many as 14, written by one and the same hand, at one and the same time. I say 14: this is capable of being done; for this has been done. If of the whole number any one is correct, so are all the rest. If in any

one there be any error, that same error has place in all the rest; and for the detection of it in them all, no skilled labour is necessary or of use.

Then as to the correction of these errors. With pen and ink, in the common way, correction made in the manner in which corrections are made in a *proof sheet* in printing having been made in any one of them, the number of words the aggregate of these corrections consisted of, would be all that would be to be copied in the others; and of these errors — one or all of them — how great soever may be the importance, not frequently can it happen that the number should be very considerable.

When the worst comes to the worst, all that would be to be done is, the copying over again such of the *leaves*, and such of them only, in which the errors make their appearance. And this is one advantage resulting from the moderateness and uniformity which may be given to the size of the leaves, whereas for anything that appears in the bill, the documents sent into the office for registration may be of the great and greatly diversified extent of which papers and skins of parchment are susceptible.

Page 278. "It would be convenient to require that every deed, will, or document, brought for registry, should be accompanied with a short *synopsis* or statement of the contents; in order that, when found to be correct, it might be copied into the register book, as a marginal index to the copy of the instrument, and also with such other description of the nature of the document as ought to be inserted in any of the indexes or books of reference."

Supposing the sort of abridgment in question to be of use, and for facility of conception (it should seem) it would be — for so it is in the case of a bill and an act of parliament, it might be ordained to be made in the original, in which case it would have place of course in each of the several exemplars of it. But a standing and universally-applying rule should be enacted, declaring that no words employed in the abridgment shall be understood as influencing the construction to be put upon the text at large.

Will it be said that by the employing exemplars of the whole of each document instead of the proposed abridgment, the bulk of the aggregate number of the deposits would be swelled to such a degree, that the expense of the buildings necessary for the reception of them would be so great as to constitute a decisive objection against the use thus proposed to be made of the manifold mode? At any rate, this objection would not lie in the mouth of any man to whom (as in p. 275) the choice of having a building for each one of the forty-two counties, and the having but one for all the counties together, is stated as being nearly a matter of indifference.

On the plan proposed in the above extract, here would be for learned gentlemen the profit, and for unlearned parties the expense, of skilled labour to be employed in the drawing of these same synopses with the danger of errors therein occurring, and the certain expense of corrections to be applied to those same errors: in the case of the manifold exemplar of the document at large, no demand for any such synopsis, nor any possibility of any such errors.

Page 278. "The office," he goes on to say, "might be divided into two departments, one for ascertaining the authenticity of documents proposed to be registered, and the other for preserving and affording facility of reference to them; and they might be so regulated that the one should afford a check against negligence or error in the other. The latter department might be divided into as many different offices as there are counties or ridings, including the cities and towns, which are counties of themselves in the districts in which they are locally situated: and there might be an additional office for such documents as relate to more than one county."

Thus far Mr. Tyrrell. For my part, I do not clearly perceive the utility of this reduplication of the expense: still less the preponderance of the benefit in this case over the burthen: all that in relation to this matter I do clearly perceive is — that, by the use of the manifold, the expense, whatever it is, would be nearly, and the danger of error altogether, done away.

So much as to the notion about *needlessness*.

In fine, to the employment proposed to be given to the manifold mode of writing, is there now any really operative objection, other than that which is opposed by the *fees*, which by it would be kept out of the pockets of learned gentlemen, and kept from taking their departure out of the pockets of unlearned suitors?

While writing this, I am also employed on my plan for extinguishing the factitious *delay*, factitious and mis-sealed *expense*, with the thence-resulting *sale* and *denial* of justice. The *manifold* mode of writing applied to the minutation of evidence, is a means and instrument altogether indispensable, the employment of it a condition *sine quâ non*, to the giving to that unspeakably-important benefit the degree of perfection it is susceptible of: and of its usefulness with reference to that ulterior purpose, mention may be seen hereinabove made.

By adopting and exemplifying these my suggestions in relation to it, it depends upon you, gentlemen, to bring under the eyes of all whom it may concern, a demonstration of its

practicability and usefulness, for that the most important of all purposes.

The subject-matter committed to our consideration (says somebody) is, *not* how justice may be administered at least expense, but how the respective owners of what is called *real property* may be best secured against the loss of it. True: but if the instrument in question, be it what it may, is good for the purpose in question, its being also good for another purpose, or for other purposes in any number, is most assuredly, to any intelligent mind, no reason why use should not be made of that same instrument to that same purpose.

Yes: should it (which I ardently wish that it may not, and venture to hope that it will not) be my misfortune, gentlemen, to see you wilfully suffering this grand instrument of justice and security to remain unemployed, for want of any endeavours on your part to give adoption and support to it, and the community to remain destitute of the benefit of which it affords so bright a prospect, — parliament, and through parliament, or without parliament, other nations as well as this shall hear of it; and to the latest posterity the shame of such a wilful neglect shall lie on the heads to which it belongs. No; never so long as I have a voice, or a pen, capable of giving utterance to these my wishes, — never shall cease my endeavours for the adoption of it — my incontestably just reproaches for the neglect of it.

VII. OBJECT THE SEVENTH. — Minimization of the burthen in the shape of expense, with which the benefit produced by registration is clogged.

Means of effectuation, these —

1. Burthen transferred from individuals to public.

The burthen thus transferred from the shoulders least able to the shoulders most able to bear it.

In the shape of *fees*, unless proportioned in each instance to the pecuniary ability of the individuals at whose hands respectively they were called for (which is what they could not be,) the burthen would, in so far as paid, press on each individual with a weight of affliction more and more heavy, in proportion as he was less and less able to bear it; and, in individual instances to an indefinite number, the individual not having wherewithal to pay the fee or fees, would exclude him altogether from all participation in the benefit of the institution.

For, to the smallness of the value of the subject-matter in question, no limit can be set.

In regard to *feelings*, what the smallness of the value in question is too apt to do — indeed, to a greater or less degree, it may be affirmed, has accordingly done, — in the breast of every public man by whom the matter has ever been taken into consideration, is, to diminish the idea of the pressure; and *that* in such sort as to exclude from his affections all regard for it: unhappily no such effect has it upon the feelings of the individual who is thus dealt with.

2. *Fees*, as above, none: remuneration of the functionaries, the whole of it, in another shape; namely, that of *salary*.

Of the importance of this object, considered in another point of view, namely, the minimization of the *expense*, whatsoever be the shoulders on which it is laid, — a view has been already given; that is to say, under the head of the first object — EXPENSE MINIMIZED.

3. *Means of communication* for documents and other writings, the *letter-post*: thence, expense of separate communication through skilled labour, saved.

In the bill, I have the satisfaction of seeing this mode of communication ordained to be employed. How well adapted it is to this purpose, and how prodigious the saving made by it, in comparison with that mode of communication, by *special messengers*, which is employed where law proceedings are the subject, has been abundantly shown, and is much too abundantly felt.

In a work of mine, intituled *Petitions for Justice and Codification*, — namely, in p. 158 of the *Petition for Justice*, art. 9, of the part, which has for its subject-matter the *judiciary establishment*, — a proposition to this effect is contained: "That, for trustworthiness and economy," (says the passage in question) "the business of *message*-carrying be, as far as may be, performed by the machinery of the *letter-post*."

Gentlemen! I have now said my say. For your part, you have a choice to make: you will either break your engagement and consign these pages to oblivion, or keep to your engagement, and to this address, presumptuous as it is, give publication in your next report. *Dixi*. JEREMY BENTHAM.

Queen's Square Place, Westminster,
4th July 1831.

JUSTICE AND CODIFICATION PETITIONS:

BEING

FORMS PROPOSED FOR *SIGNATURE*

BY ALL PERSONS WHOSE DESIRE IT IS TO SEE

JUSTICE

NO LONGER SOLD, DELAYED, OR DENIED:

AND TO OBTAIN

A POSSIBILITY OF THAT KNOWLEDGE OF THE LAW,

IN PROPORTION TO THE WANT OF WHICH THEY ARE SUBJECTED TO

UNJUST PUNISHMENTS,

AND

DEPRIVED OF THE BENEFIT OF THEIR RIGHTS.

DRAFTS FOR THE ABOVE PROPOSED PETITIONS,

BY JEREMY BENTHAM.

ORIGINALLY PUBLISHED IN 1829.

JUSTICE AND CODIFICATION PETITIONS.

CONTENTS.

ADVERTISEMENT.

CONTAINED in the present publication are three papers:—

Paper the first, Proposed Petition for JUSTICE, at *full length*.

Paper the second, Proposed Petition for JUSTICE in an *abridged* form.

Paper the third, Proposed Petition for CODIFICATION.

I. Petition for JUSTICE at *full length*. Parts of it these:—

Part I. *Case made:* — Grounds of the hereby proposed application to the House of Commons: inaptitude, to wit, of the existing system of judicial *procedure*, with reference to its alleged and supposed ends, as also of the judicial *establishment* occupied in the application of it: proofs, the several heads and instances of abuse and imperfection, which are accordingly brought and held up to view.

Part II. *Prayer consequent:* — Remedy proposed, for the disorder composed of those same abuses and imperfections.

Prayer, its parts,—

Part 1. Outline of the proposed *judicial establishment*.

Part 2. Outline of the proposed system of *procedure*. Model, the *domestic* system: that, to wit, which is pursued of course by every intelligent father of a family, without any such idea as that of its constituting the matter of an art or science: sole difference the necessary enlargement and diversification, correspondent to the difference in magnitude between the two theatres.

II. Petition for JUSTICE in an *abridged* form. Parts of it these:—

Part I. Abridgment of the *case* part of the full-length petition.

Part II. *Prayer* part. Matter of it the same, word for word, as that of the full-length petition: reference accordingly sufficient; repetition, needless.

Reasons for the two different forms, these:

1. In the full-length petition, number of the pages, as will be seen 207. Cumbrous would an instrument of this length be, if presented in the only *form* in which it would be received, — cumbrous, and *that* to such a degree, that its bulk might of itself be found an insurmountable obstacle to its being carried about for signature. This form is — that of a roll of parchment, composed of skins tacked on, one to another; length, whatever is necessary for receiving the signatures, in addition to the matter of the petition.

2. Compared with that of the abridged instrument, the expense of the operation of engrossing would of itself be a serious obstacle.

3. *Readers* in greater numbers — *readers* and thence *signers*, may of course be expected for the shorter than for the longer instrument: to each reader the two will here present themselves for choice.

For *reading*, the instrument presented to a person looked to as disposed to promote the design, will be of course a printed copy of this work. In this way it is perusable by any number of persons at the same time; while,

if there was no other copy than the above-mentioned roll, years might elapse before this instrument could pass through the number of hands in succession, to each of whom a single day might suffice for the perusal of a copy of it.

III. Petition for CODIFICATION. Intimately connected is the subject-matter of this petition with that of the petition for *justice*. No otherwise than by codification can the reform here prayed for — or any effectual reform in any shape — be carried into effect. A petition, in the terms here seen, having been honoured by the approbation of Mr. O'Connell, has by that gentleman, as a letter of his informs the author of these papers, been put into the hands of the *Catholic Association* for the purpose of its being circulated for signatures.

Of this publication — the ultimate object being the engaging Parliament to take into consideration the subject matter of it, the immediate and instrumental object is, the engaging individuals to concur, by their signatures, in the endeavour to induce Parliament to take the desired course.

Persons looked to for signatures, who? Answer: Every person, in whose breast any such desire has place as that of seeing made, in relation to any subject-matter touched upon by it, any change not looked for by him from any other source: any change whatsoever, be the complexion of it ever so different from, or ever so opposite to, that of the change here proposed.

What? (says somebody) — co-operation expected from persons entertaining desires directly opposite? Yes, even from them. How so? Because, supposing Parliament taking the matter into consideration, — to each person, for the seeing such his own desires gratified, would thus be afforded a chance, such as he would not possess otherwise.

But if, at the hands even of persons entertaining opposite views and wishes, such co-operation may not unreasonably be expected, with how much stronger assurance may it be expected at the hands of persons whose views and wishes are more or less in accordance with what is here endeavoured at?

Now as to the ground of expectation in regard to Parliament. This is the distinctive character of the present work, presenting, as it does, in addition to the statement, and that an all-comprehensive one, of the alleged *disorder*, a proposed *remedy*. So far as regards the mere disorder, the work is an operation, an easier than which could not easily be found: at no time can any hand be incompetent to it. While, in any such task, as that of the exhibition of a remedy so much as approaching to co-extensiveness with the disorder, no ground appears for supposing any other hand at present engaged, — or, without invitation, likely in any way to engage.

This or none, such alone is the option presented to every person on whose part any disposition has place to employ his signature in applying to the disorder its sole possible remedy. To wait till a draught to this extent presented itself, to no part of which he saw anything to object, would be to wait till the end of time!

In regard to codification, included in the object of this publication, is, it will be seen, not only the presenting to view the fruit of the author's own labours, but the engaging other candidates in the greatest number obtainable in the same, so supremely and all-comprehensively important, service.

Nor to this purpose is the same sanction of authority altogether wanting. By implication at any rate, codification has in its favour the declared opinion, and recommendation of the Real Property Commissioners: witness the questions circulated by them. Sufficiently manifest at any rate is the recommendation, while, in pursuance of their labours, something should be done. But by Parliament, whatever it be, either by codification or not at all, will it have been done: and whatever be the length to which this indispensable operation has been carried — why it should stop there or anywhere short of completion, is a question to which it rests with any declared opponent of codification to find, if it be in his power, anything like a rational answer: by his refusal to answer it, or his silence, in relation to it, judgment of inconsistency against him will be signed.

These things considered, requisite assurances are not wanting, that as soon as the press of more urgent business admits, the matter of both petitions will, by appropriate motions, be brought to the view of the Honourable House.

Instructions as to the mode of proceeding for obtaining signatures.

Provide a skin of parchment, tack to it, one after another, others in sufficient number to contain the matter of the petition, with the addition of signatures in such number as you expect to obtain for it. A thing desirable is, that all persons who join in the petition may be distinguished, each one from any other: for this purpose, let each subscriber add to his name at length an indication of the place of his abode. If it be where there is not a town, the name of the county and the parish will be the proper mode of designation: if in a town, the name of the town, with that of the street or other mode of address, employed in sending a letter by the *post*. To save bulk and expense, — divide the roll into parallel columns, each of them wide enough to receive a signature of an average length, in which case, when it exceeds that length, two lines will always be necessary, though commonly sufficient. To each signature prefix a number expressive of the order in which it stands.

As to the instrument thus employed — in general, if not exclusively — it will be the *abridged* petition: the *full-length* petition being much too large, and the transcription of it too expensive, for general use. To any person disposed to use his endeavours to obtain signatures for the longer petition, should it present itself as being too long, an easy operation it will be to strike out of it such parts as, it seems to him, can best be spared. Where any *abridged* petition is the one employed — in this case, a copy of the petition at length, as printed, should be left with the person applied to, that he may peruse it, if so inclined, before the roll is put into his hands for signature.

Of the opposition which every such coadjutor has reason to expect, it is material that he should be sufficiently aware. From all persons to whom any change in the existing system would be an object of regret, such is the reception which should of course be looked for and provided against: and in this number are included of course all those by whom, to any amount, in any shape, in any way, direct or indirect, profit is derived, or thought by them to be derived, from any abuse or imperfection, to which, by the proposed draught, a remedy is endeavoured to be applied: more particularly all attornies or solicitors, as of late years they have been called, and persons especially connected with them by any tie of interest or relationship, not to speak of judges, other persons belonging to the judicial establishment, and barristers.

Nor as to the whole class, and its several ramifications, let it ever be out of mind, that, on their own principles, by their own showing, being incontestably interested, they are, one and all, in relation to this matter, not to speak of so many other matters, to use their own language, so many incompetent, incredible, and altogether inadmissible witnesses.

Of this publication one natural effect is the producing addresses, in one way or other, to the author, from correspondents, to the number of whom no certain limits can be predicted, and which, if precautions were not taken, might be such as to be oppressive. For, so it is, that whatever probability there may be of the presentation of *petitions*, or though it were no more than a single petition, in the course of the present session, the like probability may continue during an indefinite length of ulterior time: but for the arrangement thus requested, this publication might therefore have for one of its effects the imposing upon the author a charge to an indefinite amount, and not terminating but with his life.

On this account it is requested that no communication be addressed to the author but through the medium of the bookseller: nor to the bookseller, but either post paid, or accompanied with an order for a copy of the work.

Lastly, as to the usefulness of this production, and the endurance of which it is susceptible. To those whom the design may be fortunate enough to number amongst its well-wishers, and the production among its approvers, a consideration that cannot fail to be more or less agreeable is, — that, whatsoever may be its capacity for attracting signatures, the same may remain to it during an indefinite length of time: and that so long as the remembrance of this publication lasts, no one to whom the existing self-styled instrument of security is a source and instrument — of depredation, of oppression, in a word, of *injury* in any shape, can be in want of a ready vehicle for the communication of his complaints.

PRELIMINARY EXPLANATIONS NECESSARY TO BE FIRST READ.

1. In the introductory advertisement will have been seen, the consideration which gave birth to the proposed abridged petition for justice, in addition to the full-length petition.

2. When that advertisement went to the press, the drawing up of the abridged petition had proceeded about half way: and, from the progress at that time made had been deduced an assurance, delusive as it has proved, of completing it within the desired compass: the compass, both as to *time* and *space*.

3. From that time, the further this part of the work went on, the less apposite was perceived to be the appellative *abridged*, by which it had been originally designated: till, at length, instead of the one operation *abridgment*, four distinguishable ones — subtraction, addition, repetition, substitution, — were the operations found to have been performed.

4. Of this variety of operations, — imperfection, in respect of clearness, conciseness, and methodical order, on the part of the draft, considered as a literary composition, has been the indispensable consequence. But, should it be seen, as the author trusts it will be, that without detriment to the practical purpose, no different course could have been pursued, — no material dissatisfaction on the part of the reader will, it is hoped, have place.

5. Practical *end* or purpose, — change for the better: *means* employed, — maximizing the number of the persons known to entertain the desire of seeing such change take place: *mode* of making this desire known, —

attachment of each one's signature to some copy of a petition praying for such change.

6. Now, then, for maximizing the number of signatures, one means is — the maximizing the number of copies, offered for the reception of those same signatures. But, by the bulkiness of the aggregate mass of the matter by which the *reasons* for the change stand expressed, will the end and purpose be obstructed? No: it will be promoted. How so? *Answer:* Because the instrument may be cut into smaller instruments, in any number, to each of which, signatures may be found obtainable, from persons from whom this expression of concurrence would not have been obtainable for any one other of these same component parts, much less for the whole.

7. Now, then, as to the particular use and purpose of the two here proposed instruments — full-length and abridged petitions — taken together. This was — the maximizing the number of the arrangements in the existing system, seen by the several readers to be adverse to the ends of justice; to which end, a means manifestly conducive was — the tying up, as it were, of those same arrangements into bundles, characterized and distinguished from each other by appropriate names. This, accordingly, is what has been done by the list of *devices*.

8. Considerations, showing the course actually pursued to have been the most conducive that *could* have been pursued, the following: —

9. In proportion as the operation went on, — matters of detail, deemed, all of them, contributory to the common ends, but which had not, all of them, presented themselves at the time of drawing up the first-drawn petition, — came into view. By exclusion put upon any of these additional grounds and inducements, would the chance for the attainment of the common end have been increased? No, surely.

10. True it is — that, in the ordinary case of an abridgment, — between clearness and conciseness, a mutual repugnancy has place: as conciseness is increased, clearness is diminished. But, in the present case, happily no such repugnancy has place: no mutual counteraction but what is capable of being effectually got rid of. Decomposition, as above, is the operation by which this reconciliation is capable of being effected; and is accordingly here proposed to be effected.

11. Now as to the course which may be seen *actually* taken, as above, in pursuance of the *design* of abbreviation. *First* came *condensation;* as in the ordinary case of an abridgment: *then*, simple *elimination*, or say *subtraction*, applied to certain *paragraphs* belonging to the device *in* question: *lastly*, *elimination* applied to the *whole* of the matters contained under the head of a Device. In this last way may be seen dealt with three devices: namely, Device XI. *Decision on grounds avowedly foreign to the merits;* Device XII. *Juries subdued and subjugated;* and Device XIV. *Result of the fissure* (in Device XIII. mentioned) *groundless arrestation for debt.* As the pressure produced by the influx of additional matter increased, these more and more efficient modes of reduction may be seen successively employed.

12. The two drafts taken together being in this state, comes now the question — of the compound mass — any and what portion is there, that can with truth be pronounced useless? Answer, Yes: namely, the aggregate of the paragraphs reprinted without variation.

After this deduction, every other assignable portion of the matter may be stated as having its use.

13. The case in which, if at all, the correctness of this proposition will be most questionable, is that in which, of two paragraphs, the one is, as above, but a *condensation* of the other: but, even in this case, so it may be, that the one of them may be the most apt in the eyes of one set of proposed subscribers; the other, in the eyes of another such set.

14. In the disposition made of the matter of the *original* draft, — and thereafter of that of the *abridged* draft, — a *method*, as serviceable as it was in the author's power to give, has been given to it. But now — take the worst case that can have place. Suppose nothing to have place that can have any claim to the appellation of *method:* — the whole matter — is it useless, and the labour thrown away? By no means.

15. For, the purpose being to prevail upon the constituted authorities to take the whole of the mass of existing law in question for the subject matter of consideration — and this for the purpose of reform and amendment, — of no blemish in any shape, can any indication, in any language or form, be given, that will not be more or less contributory and conducive to the purpose.

16. Upon the whole, — proposed for the choice of all persons, disposed to be contributory to the proposed design, by framing drafts for circulation, for the purpose of obtaining signatures, will be — the *options*, examples of which are the following: —

I. To employ the *full-length* draft, without alteration, as it stands.

II. To employ the *abridged* draft, without alteration, as it stands.

III. To employ either draft, with amendments, such as may appear meet: amendments, whether additive, subtractive, or substitutive.

IV. To form drafts of their own; composed of matter — none of it contained under any of the heads employed in the above drafts.

V. To form drafts, composed of matter of

their own, with or without use made of those same heads, and with or without insertion, *declaredly* given to more or less of the matter contained under them.

VI. To frame drafts composed of matters exclusively their own, without reference made to, or use in any way made of, any part of the matter contained in either of these same drafts.

17. Of these several options (to which others might have been added) the one last mentioned (it will of course be supposed) is not of the number of those which the author expects to see embraced. But, even supposing it were, — whatsoever be the number of the drafts, thus framed, and, with attached signatures, presented to the constituted authorities, — correspondent will be the service rendered to the cause of reform and improvement by these pages.

18. A lottery (suppose) set up; and paragraphs of the abridged petition, some or all of them, drawn out of it, and written down on the roll in the order assigned to them by *fortune*, — even in this case, a petition, so framed and thereupon signed, would not be altogether without its use.

19. So long as that most all-comprehensive, most grinding, and most crying of all grievances — the tyranny of judge-made law —continues unredressed,—the correspondent public service unperformed — so long as the torrent of human misery, flowing from it, keeps running on; — be the number of ages during which it will have continued ever so great, never will the use, whatever it be, which the matter of these proposed petitions is capable of being put to, be at an end.

20. To the care of posterity, should the time not be yet ripe, the author will recommend this matchless service with his dying breath.

21. Hapless individual, whoever you may be, whose lot it is to behold your means of subsistence torn from you, and plunged into the gulph called by a cruel mockery a *court of equity*, there to be devoured by the appointed sharks, — in these pages you may at all times see samples — samples ready made — of the only sort of *instrument*, which it is in your power to make application of, in the character of a remedy: — with this in hand, you may go about, and look about, for assistants and coadjutors, in those companions in misery, whom, in such deplorable abundance, you will behold presenting themselves all around.

22. Nor, while for companions in misery you look sideways, forget to look upwards, for the authors—cruel hypocrites, in pretence alleviators—in reality preservers—of all parts of it anxious and industrious preservers, when neither creators nor exacerbators.

23. But (says somebody) is there not one still better course left, which you might have taken, and which is still left open to you to take? From the matter of the original full-length petition and the abridged petition taken together, might not you have drawn up — might not you even now draw up — a new draft, consigning to the flames *both* the existing ones? *Answer:* By *time* and *expense* taken together, intimation is given of two objections, the first of which might of itself be conclusive: considering that, during the time thus occupied in an operation little better than mechanical, all other works, of greater usefulness in this same time, would be at a stand.

24. But another answer still more conclusive, and it is hoped satisfactory, is this. By no means, by any such ulterior and amended abridgment, would the purpose of it be answered. For, while for the purpose of it, a survey were taken of the field, fresh weeds would be seen springing up, and pressing themselves upon the extirpating hand. In this way, after enlarged as well as abridged editions, in any number — each superseding all former ones, — still the demand for another and another would be presenting itself: nor, for the consumption of labour, time, and money, would the demand cease, till the work, of which an *outline*, and nothing more, is here professed to be presented, had been brought to a state regarded as a state of completeness.

25. Suppose it now in that state, the following is the form in which it would present itself to view: of the here-proposed system, the part called the *prayer*, in the very *words*, or as lawyers say, *tenor* of it, occupying the foremost places: but, by the side of it, all along, a delineation of the several correspondent features of alleged inaptitude, ascribed to the existing systems: to the principal *text* would thus be subjoined a sort of *perpetual commentary* thus composed.

26. In conclusion, a word or two as to the *numerical figures*, which, in the abridged petition, stand prefixed to the paragraphs: in the abridged petition only; in the original one not; the demand for that help to reference not having as yet presented itself to view.

27. For all but the two *first* of the above proposed six options, indisputable assuredly is the facility that will be found afforded by this little additament. Witness, sad experience of the result of the non-employment of them. By means of these instruments (than which nothing can be more familiar or indispensably useful, — or even, by the constituted authorities themselves, more universally applied to portions of the matter of law, — except where the production of uncertainty and mistake is among the objects aimed at) reference is, in the concisest manner possible, made to any assemblage of words whatsoever,

without danger of mistake: — without them, mistake and uncertainty may, to any amount, be produced.

28. Accordingly, wherever, in relation to a law or a body of laws, to maximize the execution and effect given to it is really an object of desire, — numerical figures, prefixed to the several portions of discourse, are the instruments employed. Witness the practice in every civilized part of the globe; England — lawyer-ridden England — alone excepted.

29. On the other hand, wherever the design entertained is — the giving increase to such uncertainty, with its attendant miseries, — objects in view the benefit of the lawyer class, and those connected with it by any community of sinister interest, — the use of this, together with so many other instruments of certainty, is pertinaciously and inexorably abstained from: imitated thus the fabled barbarity of Mezentius: kept bound up in the closest contact with carcases in an ambiguous state between life and death, is the whole stock of those statutes, which are still designed, as well as destined, to be employed as living ones. Witness the latest of the string of *bills*, framed exactly as if they had for their object, on pretence of diminution, the augmentation and perpetuation of depredation and oppression. "Repealed — such an act (thereupon designated by its long and wordy title,) and such an act (designated in the same conception-confounding manner) and *so much* of such an act — in like manner designated." — So much? How much? Learned sir! Right honourable sir! whichever be your right name — render it possible for us to know *how much:* instead of consigning to complete ruin, by alleged mistake as to the *how much*, on the part of a wretch, who has been half ruined by some petty tyrant, clothed in the authority of a justice of the peace, at whose charge, on the faith of parliament, that compensation has been *sought*, which would not have been promised, but for the foreknowledge that it would never be granted. — "*So much?*" — Once more, *how* much? — Till of late, followed upon the words "*so much*" the words "*as relates to* the subject of....:" whereupon came some sort of designation given of it. Now, even this clue is refused, and the passage evaporates in nonsense.

30. To these figures, — when the question was as to the mode of preparing drafts for receiving signatures, — an objection was made on the ground of *unusualness*. To the quarter from whence the objection came, nothing short of the most respectful attention could be paid. But the use, to which on that occasion it was destined, was no other than that of being applied to an instrument which was then actually in a state for receiving signatures: and to which accordingly, references, for any such purpose as the one then in question, were not intended to be made. Of these instruments of clarification, the use and purpose here in question is — the subjecting to decomposition the supposed too bulky bodies, — that out of them, other bodies in any required number, *polype* like, might be framed. But, in the case here alluded to, no such decomposition was contemplated.

Comes now another use, of these small but effective instruments of precision: call it, for example, the *argumentative*, or argument-assisting use: calling, for distinction's sake, the one first mentioned the *simply indicative*. Of these same little instruments is constituted a support — and that a matchless one — for *close reasoning*.

32. Pitiable, in good truth, will be seen to be the condition of the disingenuous opponent, who, casting an eye on a body of argument which he stands engaged to encounter and attack, beholds it armed with them. Thus distributed into so many articulate parts, — for the clear, correct, and complete designation of each of which, a single word is effectually sufficient, — the discourse, be it what it may, presents to him, in each part of it, a determinate and never-misapprehensible object and standard of reference. "Here, sir, is proposition the first. What say you to it? has it your assent? has it your dissent? If your dissent, for what reason or reasons?" Unapprised of the existence of these defences, — he comes (suppose) with his quiver full of *devices* borrowed from the *Book of Fallacies*. See, then, the condition in which he finds himself. Instead of doing as he had flattered himself with doing, — instead of shooting fallacies into the middle of the discourse at random, — or enveloping the whole expanse of it, as it were, in a net, — he feels himself pinned down, under the pressure of a most distressing alternative. Taking in hand the chain of discourse, — either he must grapple with the links which it is thus composed of, one after another, — or remain motionless: — remain motionless; and thus, by a token more unequivocal and demonstrative than it is in the power of words to be, acknowledge the object of his hostility to be unassailable.

Nothing can he say — (for such is the supposition, and this is a supposition which may continually be seen verified) — nothing can he say, but what is to be found in this or that chapter, section, and article of the *Book of Fallacies:* some article, in and by which, before he ever took this device of his in hand, it may be seen ready confuted. Looking at the mark, — nothing can he find to hit it with, but some witticism — some well-worn piece of nothingness — some *vague generality* — which, — like a cloud, — dark or more or less brilliant, — hanging in the air, — is seen to have no substance — nothing that can be brought to bear upon the object of his warfare.

33. "Well, sir," — says now to him the master of fair and close reasoning: — "here, sir, is the proposition: what say you to it?" — What! nothing? a man — for ingenuity and promptitude so highly distinguished, kept mute by prudence, because unable to find anything which a man could utter without shame? — What! still silent? Well, then: the demonstration is complete: the proposition uncontrovertible. Yes, altogether uncontrovertible; since you, sir, even you, can find nothing to object to it.

34. Think now, once more, of the condition of the disingenuous and self-condemned would-be assailant, — when, by every fresh proposition, he beholds a fresh triumph over him thus secured.

☞ After writing what is above, came the conception and the hope, that an additional optional petition might have its use: and that, — by the same observations, by which *explanation* and *justification* have been given to the two first, — the like service might in a sufficient degree be rendered to this third: by the title of the *More Abridged Petition*, it is accordingly subjoined.

PETITION FOR JUSTICE.

To the Honourable the House of Commons in Parliament assembled.

JUSTICE! justice! accessible justice! Justice, not for the few alone, but for all! No longer nominal, but at length real justice! In these few words stands expressed the sum and substance of the humble petition, which we, the undersigned, in behalf of ourselves and all other his Majesty's long-suffering subjects, now at length have become emboldened to address to the Honourable House.

At present, to all men, justice, or what goes by that name, is either denied or sold; denied to the immense many — sold to the favoured few; nor to these, but at an extensively ruinous price. Such is the *grievance*.

As to the cause, it is undeniable. Power to judges to pay themselves — to pay themselves what they please, so it be at the expense of suitors.

The denial and the sale follow of necessity. Be the pay in each instance but a farthing, to all that cannot pay the farthing, justice is denied: to all those who can and do pay the farthing, sold.

And the persons on whom alone this burthen is imposed, who are they? Who, but the very persons, who alone, were the exemption possible, should be exempted — altogether exempted from it. Distinguished from all other persons are suitors, by the *vexation* which, as such, they endure. The security, whatever it be, which, by this vexation, these so dearly pay for, all others enjoy without it; and on each man, the greater the vexation in other shapes, the higher (it will be seen) is the tax; for the longer, and thence the more vexatious, the suit, the more numerous are the occasions on which payment of this species of tax comes to be exacted.

What if this faculty of setting, in the same way, their own price upon their own service, were given — (and why might it not as well be given?) — to functionaries in other departments? — say, for example, the military. The business of military functionaries is to give security against external, of judiciary functionaries against internal adversaries. What if to the army power were given to exact whatever contributions it pleased, so it were from those alone who had been sufferers from hostile inroads? By those military functionaries this power has not ever been received; by judiciary functionaries it not only has been received, but to this day, continues to be exercised.

The tax called *ship-money* found a Hampden to oppose it; to oppose it at the expense, first of his money, then of his life. Neither in its principle was that same *ship-money* so absurd, nor in its worst natural consequences would it have been, by a vast amount, so mischievous, as this *justice-money*, for so, with not less propriety, might it be called. *Ship-money* produced its Hampden: the Hampden for *justice-money* is yet to seek.

Taxes, imposed on suitors at the instance of ministers were bad enough; but they are not, by a great deal, so bad as those imposed by judges. Ministers cannot, without the sanction of Parliament, give increase to taxes imposed at their instance. Judges can, and do give increase, at pleasure, to taxes imposed for their own emolument, by themselves.

Out of our torments they extract their own comfort; and in the way in which they proceed, for each particle of comfort extracted for themselves, they, of necessity, heap an unmeasurable load of torment upon us. By every fee imposed, men, in countless multitudes, are, for want of money to commence to carry on a suit, deprived of rights to any amount, and left to suffer, without redress, wrongs to any amount; others made to suffer at the hands of judges, for want of the money necessary to enable them to defend themselves against unjust suits.

In all other cases, the presumption is, that, if left to himself, man will, upon each occasion, sacrifice to his own, every other interest; and upon this supposition are all laws grounded: what is there in irresistible power,

wrapt in impunity, that should make it — what is there in an English judge that should make him — an exception to this rule?

Such being the grievance, and such the cause of it, now as to the remedy. *The cause* we said, for shortness; *the causes*, we should have said, for there is a chain of them; nor till the whole chain has been brought to view can any tolerably adequate conception be entertained of the sole effectual remedy — the natural substituted to the existing technical system of procedure. Cause of the opposite-ness of the system to the ends of justice, the sinister interest on the part of the judges, with whom it originated. Cause of this sinister interest, the mode of their remuneration: instead of salary paid by government, fees exacted from suitors. Cause of this mode of remuneration, want of settled revenue in a pecuniary shape: for military and other purposes, personal service rendered to government, being paid for, not in money, but in land. Cause of this mode of payment, rude state of society in these early times.

But for the Norman conquest, no such sinister interest, in conjunction with the power of giving effect to it, would have had place. At the time of that disastrous revolution, the local field of judicature was found divided into small districts, each with its appropriate judicatory; still remaining, with small parcels, or faint shades of the power, are the denominations of those judicatories, county courts, for example, hundred courts, courts leet, courts baron. In each such district, in the powers of judicature, sharers (in form and extent not exactly known) the whole body of the freeholders. Form of procedure, the natural, the domestic; natural — that is to say, clear of all those forms by which the existing system — product of sinister *art*, and thence so appositely termed the *technical* — stands distinguished from it: forms, all of them subservient, of course, to the ends of judicature; all of them opposite, as will be seen, to the ends of justice.

Let not any such charge as that of unwarrantable presumption attach on the views, which we, your petitioners, venture thus respectfully to submit to the Honourable House. Be the occasion what it may, — when by numerous and promiscuous multitudes, expression is given to the same opinions, as well as to the same wishes, unavoidably different are the sources from which those opinions and those wishes are derived: in some reflection made by themselves; in others, confidence reposed in associates. Among those in whom, on the present occasion, the necessary confidence is reposed, are those, the whole adult part of whose lives the study of the subject has found devoted to it.

History and description will now proceed hand-in-hand. As it was in the beginning, so is it now. How things are, will be seen by its being seen how they came to be so. To the arrangements, by which the existing system has been rendered thus adverse to the ends of justice, will be given the denomination of *devices:* devices, having for their purposes the above-mentioned actual ends of judicature: and under the head of each device, in such order as circumstances may in each instance appear to require, the attention of the Honourable House is solicited for the considerations following: —

1. Mischievousness of the device to the public in respect of the adverseness of the arrangement to the ends of justice.

2. Subserviency of the device to the purposes of the authors — that is to say, the judges, and others, partakers with them in the sinister interests.

3. Impossibility that this adverseness and this subserviency should not have been seen by the authors.

4. Impossibility, after this exposure, that that same adverseness should not now be seen by those to whom the device is a source of profit.

5. Incidentally, originally-established apt arrangements, superseded and excluded by the device.

The ends of justice, we must unavoidably *remind* (we will not say *inform*) the Honourable House — the ends of justice are, — 1. The giving execution and effect to the rule of action; this the main end; 2. The doing so with the least expense, delay, and vexation possible; the collateral end.

In the main end require to be distinguished two branches: 1. Exclusion of *misdecision:* 2. Exclusion of *non-decision*. Non-decision is either from *non-demand* or *after demand*. The first case is that of simple denial of justice: the other case is that of denial of justice, aggravated by treachery and depredation to the amount of the expense: of the collateral end, the three branches, delay, expense, and vexation, have been already mentioned.

To these same ends of justice, correspondent and opposite will be seen to be the ends — the originally and still pursued actual ends — of judicature: from past misdecision, comes succeeding uncertainty; from the uncertainty, litigation: from the litigation, under the existing fee-gathering system, judge's profit: from the expense, in the more immediate way, that same sinister profit: from the delay, increase to expense and thence to that same profit: from the expense and the delay vexation: this not indeed the purposed, but the unheeded and thence recklessly increased result. Of the non-decision and the delay, ease at the expense of duty will moreover, in vast proportion, be seen to be the intended, and but too successfully cultivated, fruit.

Manner, in which this mode of payment

took place, this. Originally, king officiated not only as commander-in-chief, but as judge. From this reality came the still existing fiction, which places him on his own bench in Westminster Hall, present at every cause.

At the early period in question, in the instruments still extant under the name of *writs*, king addresses himself to judge, and says — "These people are troublesome to me with their noise: see what is the matter with them and quiet them — *ne amplius clamorem audiamus.*"

Thus far explicitly and in words. Implication added a postscript: "This will be some trouble to you; but the labourer is worthy of his hire."

Nothing better could judge have wished for. All mankind to whom, and all by whom injury had been done or supposed to be done, were thus placed at his mercy: upon the use of his power, he had but to put what price he pleased. To every one who regarded himself as injured, his assistance was indispensable: and proportioned to plaintiff's assurance of getting back from defendant the price of such assistance, would be his (the plaintiff's) readiness to part with it. To the defendant, permission to defend himself was not less indispensable. As to pay, all the judge had to choose was between high fees and low fees. High fees left at any rate most ease; but the higher they were, the less numerous: the lower, the more numerous the hands by which they could be paid. Thus it was that, by kings, what was called justice, was administered at next to no expense to themselves, the only person, by whom the burthen was borne, being the already afflicted. Bad enough this; but in France it was still worse. Independently of the taxes, imposed under that name directly, on the proceedings, profit by sale of the power of exacting the judge's fees, was made a source of revenue: and hence, instead of four benches with one judge, or at most four or five judges on a bench, arose all over the country large assembly rooms full of judges, under the name of *parliaments*.

Of the *Devices* to which we shall now intreat the attention of the Honourable House, the following are the results: —

I. Parties excluded from judges' presence.
II. Language rendered unintelligible.
III. Written instruments, where worse than useless, necessitated.
IV. Mendacity licensed, rewarded, necessitated, and by judge himself practised.
V. Oaths, for the establishment of the mendacity, necessitated.
VI. Delay in groundless and boundless lengths, established.
VII. Precipitation necessitated.
VIII. Blind fixation of times for judicial operations.
IX. Mechanical, substituted to mental judicature.
X. Mischievous transference and bandying of suits.
XI. Decision on grounds avowedly foreign to the merits.
XII. Juries subdued and subjugated.
XIII. Jurisdiction, where it should be entire, split and spliced.
XIV. Result of the fissure — groundless arrests for debt.

Explanations (we are sensible) are requisite: explanations follow.

I. *Device the First — Parties excluded from judges' presence.* — Demandant not admitted to state his demand; nor defendant his defence: admitted then only, when and because they cannot be shut out: admitted, just as strangers are: admitted without the power of acting for themselves.

In this device may be seen the *hinge*, on which all the others turn: in every other, an instrument for giving either existence or effect, or continuance to this indispensable one.

Only by indirect means could an arrangement so glaringly adverse to the ends of justice have been established: these means (it will be seen,) were the *unintelligible* language and the *written pleadings*.

At the very outset of the business, the door shut against the best evidence: evidence in the best form, from the best sources. No light let in, but through a combination of mediums, by which some rays would be absorbed, others refracted and distorted.

No information let in but through the hands of middle men, whose interest it is that redress should be as expensive, and for the sake of their share in the expense, as tardy as possible.

For what purpose but the production of deception by exclusion put upon truth, and admission given to falsehood, could any such arrangement have been so much as imagined?

For terminating a dispute in a family, was ever father mad enough to betake himself to any such course? Better ground for a commission of lunacy would not be desired; no, not by any one of the judges, by whom the profit from this device is so largely reaped.

Upon each occasion, the father's wish is to come at the truth: to come at it, whatever be the purpose: giving right, giving reward, administering compensation or administering punishment. The father's wish is to come at the truth: and the judge's wish — what else ought it to be? For coming at the truth, the means the father employs are the promptest as well as surest in his power: what less effectual means should be those employed by the judge?

Forget not here to observe how necessary the thus inhibited interview is to the ends of justice — how necessary accordingly the prevention of it to the actual ends of judicature.

Where the parties are at once allowed and obliged, each, at the earliest point of time, to appear in the presence of the judge, and eventually of each other; where this is the case (and in small-debt courts it is the case,) the demandant of course brings to view every fact and every evidence that in his view makes for his interest: and the defendant, on his first appearance, does the like. If the demand has been admitted, demandant applies himself to the extraction of admission from defendant, defendant from demandant. Original demands — cross demands — demands on the one side — demands on the other side — relevant facts on one side — relevant facts on the other side — evidence on the one side — evidence on the other side — all these grounds for decision are thus at the earliest point of time brought to the view of the judge; and, by anticipation, a picture of whatsoever, if anything, remains of the suit, pourtrayed in its genuine, most unadulterated, and most instructive colours.

Of the goodness or badness of each suitor's cause, of the correctness or incorrectness of his statements, all such evidence is presented to the judge's view, as it is in the nature of *oral* discourse, gesture, and deportment, to afford.

As to *mendacity*, say, in the language of reproach, *lying*, licence for it could no more be granted to a party, in this supposed state of things, than to a witness it is in the existing state of things.

Continue the supposition. For the truth of whatever is said, every man by whom it is said is responsible. From the very first, being in the presence, he is in the power of the judge. Moreover, for continuing such his responsibility as long as the suit renders it needful, a mode of communication with him may be settled in such sort, that, for the purpose of subsequent operations, every missive, addressed to him in that mode, may, unless the contrary be proved, be acted upon as if duly received.

In the judicatory of a justice of peace, acting singly, and in a small-debt court, conducted in this way, many and many a suit is ended almost as soon as begun: many a suit, which, in a common-law court, would have absorbed pounds by hundreds, and time by years; and, after that, or without that, in an *equity court*, pounds by thousands, and time by tens of years; as often as, upon the demandant's own showing, the demand is groundless, to him, who, under the present system, would be defendant, all the expense, all the vexation, attached to that calamitous situation, would be saved.

To go back to the primeval period, which gave rise to this device, where, in a countless swarm, fee-fed assistants and they alone had to do the business with their partner in trade, the fee-fed judge, the reverse of this took place; and continues to have place of course. Everything was and is kept back as long as possible: operation was and is made to follow operation — instrument, instrument — that each operation and each instrument may have its fees. On the one hand, *notices*, rendered as expensive as possible, are sent for the purpose of their not being received: on the other hand, of notices that have been received, the receipt is left unacknowledged or even denied, and in either case assumed not to have place.

True it is, states of things there are, in which, either at the outset, or at this or that time thereafter, neither in the instance of both parties, nor even of either party, can the appearance in question have place. For a time longer or shorter, by distance, or by infirmity, bodily or mental, a party may stand debarred altogether from making his appearance before the judge; or though appearing, the aid of an apt assistant may be necessary to him. When the party interested is a body corporate, or other numerous class, composed of individuals assignable or unassignable, of agents, and other trustees of all sorts, the attendance may, at the outset or at some later period, be necessary, with or without that of their respective parties.

But, whatever be the best course, the impracticability of it, in one instance, is it a reason for not pursuing it, as far as practicable, in any other?

Under the system, in its present state, certain sorts of suits there are, to which the exclusion does not apply itself. What are they? They are suits in which, if thus far justice were not admitted, the exclusionists might themselves be sufferers: suits for murder, theft, robbery, housebreaking, and so forth. Judges, whether they have bowels or no, have bodies: judges have houses and goods. A year or two at common-law, ten or twenty years in equity, would be too long to wait, before the criminal could be apprehended. But, that purpose accomplished, off flies justice: six months or twelve months, as it may happen, the accused lies in jail, if guilty; just so long does he, if innocent. But of this under the head of *Delays*.

But, says somebody, why say *excluded*? When, in any one of these courts, a suitor makes his appearance, is the door of the court shut against him? Did no instance ever happen, of a suitor standing up in court, and addressing himself to the judge? Oh yes: once in a term or so; scarce oftener. And why not oftener? Even because, as every man sees, nothing better than vexation is to be got by it. And, if at any, at what period can this

be? Not at the outset: not till the suit has run out an indefinite part of its destined length: the judge being in by far the greatest number of individual suits, from first to last, invisible: nor yet an invisible agent, but an invisible *non-agent:* mechanical, as will be explained; mechanical from the outset being the mode, to a truly admirable length, substituted to mental judicature. But suppose the unhappy outcast in court, proceedings, by the devices that will now immediately be explained — proceedings, and even language, have been rendered, he finds, unintelligible to him. Even if he has counsel, of whom, besides one for use, he must have at least one, and may be made to have half-a-dozen for show; if, though it be but one of them has opened his mouth, the mouth of the unhappy client is not indirectly as above, but directly, and with the most shameless effrontery, inexorably closed. The one in whom all his confidence is reposed, may, by treachery or negligence, or craving for greater gain elsewhere, have forfeited it. Three hundred guineas have been given with a brief, the fee left unearned, and restitution refused. If, in such circumstances, a counsel though it be one who, not expecting to be needed is unprepared, has but opened his lips; *no* (says the judge,) counsel has spoken for you, you shall not speak for yourself. A plaintiff, had he ever such full licence to speak, could he compel the appearance of a defendant? Not he, indeed. If both were in court together, by accident, could either compel answer to a question put to the other? As little.

II. *Device the Second — Language rendered unintelligible.* — It was by this device that, in the first instance, the exclusion was effected.

To Saxon judicature succeeded that of Norman conquerors: to Saxon liberalism, Norman absolutism. In Saxon times reigned, in adequate number, local judicatories: not only county-shires, but, so to speak, still lesser judge-shires: hundred courts, courts leet, courts baron, and others.

Then and there, people or lawyers made no difference; language was the same. From the presence of the judge, in any one of these small and adequately numerous tribunals, directly or indirectly, was suitor ever excluded? No more than in a private family, contending children from the presence of their fathers.

Under the Norman kings grew up Norman French speaking lawyers. Whether in the metropolis or elsewhere, along with his horses and their grooms, one train of these domestics was always in attendance about the person of the king. To this train was given the cognizance of all such suits as, from such varied distances, so various and some of them so long, could be made to come to it.

Quartering himself upon vassal after vassal, the king was perpetually on the move: in his train moved a judge or judges.

To this train, whatever part of the country he had to come from, every man, who had anything to complain of, had to add himself. To the place, wherever it was, that the train happened to be at, the defendant had to be dragged. When there, these same suitors there found a judge or judges, who, speaking a different language, could not, or would not, understand what they said.

The language of the Normandy-bred lawyers was a sort of French. The language of the country from whence they came, these lawyers spoke: the language of the country into which they were come, they disdained to speak. The rules, such as they were, by which the procedure of these foreign despots, — in so far as memory served, and self-regarding interest permitted, — could be guided, would of course be such as their own language gave expression to: rules which, as well as the rest of the language, were, to the vast majority of the suitors, unintelligible: meaning by suitors, on this occasion, not only those who were actually so, but those who, but for this obstacle, would have been, but could not be so. *Justiciables* they are called in French. In British India, this state of things may, with a particular degree of facility, be conceivable.

Here then by a plaintiff, if he would have his demand attended to, by a defendant if he could be admitted to contest it — here were two sorts and sets of helpmates to be hired; interpreters to convey what passed between parties and their advocates, and between witnesses and judge; and advocates to plead the cause on both sides.

Between advocates and judges the connexion was most intimate. Like robbers acting together in gangs and without licence, — these licensed, irresistible, and unpunishable depredators, linked together by one common interest, acted as *brothers*, and styled one another by that name.

Thus circumstanced, they had but to take measure of the disposable property of the suitors, and divide it among one another, as they could agree.

In and by this confederacy, in a language, intelligible seldom to both parties, most commonly to neither; or, what was worse, to one alone, was the matter talked over and settled. As to the truth of what was said, how much was true, how much was false, was not worth thinking about; means of ascertaining it there were none. Parties while exhausting themselves in fees, either looked on and stared, or, seeing that by attendance nothing was to be got but vexation, staid away. At an early period, minutes of these conversations came to be taken by authority, and continued so to be till the end of the reign of Henry the VIII.,

anno 1546, from which time, under the auspices of chance, they have been continued down to the present. Under the name of the *Year-books*, from the commencement of the reign of Edward I. anno 1272, they are, in greater or less proportion, extant in print, having been printed anno 1678.

By this one all-powerful judicatory *(metropolitan* it might have been styled, had the place of it been fixed,) by this one great French-speaking judicatory, the little local English-speaking judicatories were swallowed up. Remains to be shown how this was managed.

A suit, from which, if given *for* him, a man saw he should reap no benefit, would not be commenced by him. When, in a local judicatory, in which the plaintiff's demand being so clearly just, the defendant would have been sure to lose, a suit was depending, the judges on each occasion, at the instance of the defendant, sent to the howsoever distant judicatory an order to proceed no further, and to the defendant an order to come, and, along with the plaintiff, add himself to the train, as above. This having been made the practice, and been extensively felt and universally seen to be so; thus, all over the kingdom, was an end put to the business of all these English-speaking and justice-administering judicatories.

If a man, who was rich enough, beheld within the jurisdiction of one of those judicatories, another whom, by enmity or any other cause, he was disposed to ruin, all he had to do was to commence a suit, either in the great travelling judicatory, or in the first instance in the little first judicatory, and thence call it up into this all-devouring one.

Appeal, on such occasions, does good service; this practice *(evocation*, in French, it is called) was, anybody may see to how great a degree, an improvement upon it.

If, from all these judgeshires, howsoever denominated and empowered—county courts, hundred courts, courts leet and courts baron, —appeals had been receivable, this would have done much, but this would not have done everything. Some indeed would have passed through the strainer, and yielded fees. But by far the greater part would have stuck by the way, and have thus been useless.—Upon the vulgar modes of appeal, evocation was no small improvement. On an appeal, misdecision on the part of the inferior authority required to be proved. Presumption is shorter than proof. By an evocation, this presumption was regularly made, and being made, acted upon.

III. *Device the Third—Written Instruments, where worse than useless, necessitated.*

So far from being worse than useless, indispensable to perfect judicature is the art of writing, in so far as properly applied. Properly applied it is to three things: instrument of demand under the appropriate heads; instrument of defence under appropriate heads; and on both sides *evidence*. To no one of these three heads belong the so much worse than useless written instruments, styled *pleadings*. Behold, in the first place, the use and demand there was for instruments of this sort; meaning always with reference to the sinister interests of Judge and Co., then afterwards their particular nature.

By the unintelligibility given to the language, absolutely considered, not inconsiderable was the profit gained; comparatively speaking, relation had to what could be done, and was done accordingly, very little.

Of the French language, the usefulness to Judge and Co. was wearing out. Not to speak of amicable and commercial intercourse, *war* was, ever and anon, sending Englishmen into France, lower and higher orders together, by tens of thousands at a time. Under Edward III. a hundred thousand at one time made that fruitless visit to the walls of Paris.

While the use of the French language was thus spreading itself, so was the art of writing, and with it the use of the Latin language; among the priesthood it was common; and amongst the earliest lawyers were priests.

Now was come the time for pressing preeminently useful art, and not altogether useless erudition, into the service of discourse. Written pleadings were added to oral ones; added, not substituted; prefixt, being interposed between the delivery of the original scraps of parchment, and the debate in court. French the spoken matter, preceded by Latin, and that written; thus was darkness doubled, and difficulty trebled. Of this darkness the Latin part continued, unimpaired by any the faintest ray of light, till towards the middle of the last century. By statute of the 4th of George II. anno 1731, the darkness invisible transfigured into the existing darkness visible.

Contemplating it, the all but failure, Blackstone cannot hold his exultation.

Notice to dishonest men, in general, was then given by the fee-fed judges. Is there any man whose property, or any part of it, you would like to have?—any man you would like to ruin? If you can drop pence with them into my *till*, till they are tired, do what you like, and if they call upon me to help them, stand fast; they shall have their labour for their pains. Or, if you cannot come at them, I will do the thing for you. This was neither cried, nor sung, nor said. But when acts speak, words are needless. Such was the language then—such is the language now.

As to the uses—the advantage obtained through mendacity will be brought to view under the next head: even supposing the line

of truth ever so rigidly adhered to, still the advantage could not fail to be considerable. To no inconsiderable extent, incapacity, especially in that rude state of society, would do the work of sinister art. Only by the capacity of paying on the one part for it, would any bounds be set to the extent to which, without aiming at excess, a rambling story might be spun out on either part.

Even from the first, to the purpose of giving the proposed defendant to understand he was expected to make his appearance, on a certain day, at a certain place, on pain that should follow, was applied (it would seem) a scrap of parchment (paper as yet unknown,) with a scrap of writing written upon it. Of the writing, *Latin* was the language; by anything so vulgar as the conquered language, conquerors disdained to sully hands, lips, or ears. It was between this *writ* (so it came afterwards to be called)—between this *writ* and the *viva voce* discussion that the pleadings were interposed.

On the occasion of each suit, four things there are, to distinguish which clearly from each other was, and still continues to be found a task of no inconsiderable difficulty: these are — 1. The service demanded of the judge at the charge of the proposed defendants, say in one word *the demand*; 2. The portion of law on which the demand was grounded; 3. The individual matter of fact, which, it is alleged, has brought the individual case within the sort of case, for which the provision has been made by the law; 4. The evidence, or say the proof, by which the existence of these same facts was required and expected to be made manifest: not to speak of the *law*, where there not being any really existing portion of law bearing on the sort of case, the existence of a portion of law adapted to the plaintiff's purpose must of necessity be assumed: assumed — that is to say, created by imagination, in a form, adjusted in some way or other to the demand. Correspondent was the course necessary to be taken on the defendant's side.

As to the *demand*, next to nothing was the information given in relation to it by the *writ*. Remained therefore to be given by the pleadings the particular nature of the service, as above demanded, together with a statement of the *facts*, on which the demand was grounded, with which was chemically combined, a dram of the portion of common, alias judge-made law, which this same demand took for its ground.

Signal was the service rendered to the inventors by this decree:—1. Spoken words could not be sold at so much a dozen: the written words could be and were; so much for the profit account: 2. Of the word of mouth alterations, not a syllable could be uttered, which the judge did not sit condemned to hear: all labour, without profit: different the case when this preliminary writ ten alteration came to be added: once commenced, then on it went of itself, like a pump set a going by a steam-engine: the judge receiving his share of the profit on it, neither his ears nor his eyes being any part of the time troubled with it: so much for the *ease* account. But of this further under the head of Mechanical *vice* Mental Judicature.

Yet another use: The additional and so unhappily permanent, served thus as the subject-matter and groundwork for the subsequent and evanescent mass of profit yielding surplusage.

By the plaintiff, his story had to be told to a sort of agent called, in process of time, an *attorney*, a word which meant a *substitute*: from this statement, the attorney had to draw up a *case*: from this *case* an advocate, styled a *sergeant contour*, afterwards simply sergeant (originally styled *apprentices*—barristers were not hatched,) had to draw up the pleadings, commencing with that styled, as above, the *declaration*: attached to each of these learned persons was his clerk: masters and clerks, by each one of them was received his fees.

Father of a family! when you have a dispute to settle between two of your children, do you ever begin by driving them from your presence?—do you send them to attorney, special pleader, sergeant, or barrister? Think you that by any such assistance, any better chance would be afforded you for coming at the truth, than by hearing what the parties had to say for themselves?

Page upon page, and process upon process, each process with fees upon fees, — all these for the production of no other effect than what is every day produced all over the country by a line or two in the shape of a summons or a warrant from a justice of the peace; a hundred-horse steam-engine for driving a cork out of a bottle.

"Tell Thomas to come here," or "bring Thomas here:" this is what a father, when his wish is to see his son Thomas, says to his son John. Father of a family! if your power of endurance is equal to the task, wade through this mass of predatory trash, and imagine, if you can, the state your family would be in, if by no one of your children you could ever get anything done, without the utterance of it. Well then: exactly as necessary — exactly as contributive is it to the giving execution and effect to an ordinance of the king in parliament, as it would be to the giving execution and effect to an order addressed by you, on the most ordinary occasion, to any child of your's.

The judge was, in a word, a shopkeeper. A spurious article, stampt with the name of *justice*, the commodity he dealt in. By hearing the applicant — the would-be plaintiff in

person, nothing was to be got: by serving the scrap of parchment, a fee was to be got: one fee, and that one, like the queen bee, mother of a swarm of others.

To conclude this same subject of written pleadings, and the use of it to lawyercraft. Well might Blackstone thus triumph as above: well might he felicitate himself and his partners in the firm. To his analysis is subjoined an *Appendix*, in x. numbers, the vii. last of which are precedents of contract or procedure, chiefly procedure, still in use. Numbers vii. divided into sections 22: and, in each of several of the sections, distinct instruments more than one. An exhibition more eminently and inexcusably disgraceful to the head or heart of man, scarcely would it be in the power of reward to bring into existence. Not one of these instances is there, in which, in an honest, intelligible, and straightforward way, the purpose might not with facility be accomplished: in not one of them, in any such way, is the purpose actually aimed at. In every one of them the matter of it is a jargon of the vilest kind, composed of a mixture of lies and absurdity in the grossest forms. In maleficence, much worse than simple nonsense. By nonsense, no conception of anything being presented by it to anybody, no deception would have been produced: by this matter, to every *eye* but that of a lawyer, a false conception is presented; and, in his *mind*, if he be not sufficiently upon his guard against it, will be produced.

Such was the use derived from this invention in its original and most simple state: remain to be brought to view the increments it received, earlier or later, from the other sources above mentioned: from the suborned mendacity — from the established delays, from the groundless nullifications, on grounds avowedly foreign to the merits: and as in process of time, jurisdiction, as will be seen, came to be split, then came the ulterior improvements, introduced by equity, and spirituality: equity and spirituality — those two favourite handmaids of the dæmon of chicane.

IV. *Device the Fourth—Mendacity: licensed, rewarded, necessitated, and by Judge himself practised.*

Of this contrivance, the root will be seen in a distinction taken between *pleadings* and *evidence*. To mendacity in evidence, no allowance is given: to mendacity in pleadings, full allowance. Why not to mendacity in evidence? Because if, to this last stage in the suit, the allowance had been extended, not so much as a shadow of justice would have been kept on foot: society could not have been kept together.

Now, for this same distinction, what ground is there in the nature of the case? Not any. "Thomas Nokes took my horse on such a day" (naming it,) — says I, John Stiles (the plaintiff,) to the judge, Make him give me back the horse, or give me its value. In this may be seen the *instrument stated:* first link in the chain of written pleadings — I saw the defendant take the horse, says Matthew Martyr, afterwards, at the trial. This is called *proof* on *evidence*. Matthew Martyr, if what he thus says is false, is punishable. But if John Stiles, though conscious that the defendant never took the horse, declare that he did take it, and this for the purpose of obtaining the value at his charge, why should he be unpunishable? Rational cause for the distinction, none.

On the other hand, for the purpose of depredation under the mask of justice, — the reason — the use — the ingenuity of it is admirable. By taking off the punishment from this stage of the suit, the door was thrown open to every dishonest man who, being rich enough, felt disposed to hire the judge, to enable him, then as now, by means of the costs of suit to accomplish his dishonest purpose. By suffering the punishment to be capable of attaching at the last stage of the suit, no advantage was lost; before the suit had run this length, the defendant's ruin may have been accomplished.

Moreover, if by this or that man in the character of a witness, wilful falsehood comes to have been committed, so much the better: for here, if the purse of the party injured by falsehood not being yet drained, passion has got the better of prudence, here comes another suit: the suit by which the infliction of the punishment is demanded.

The nature of the destruction thus established, behold now the several applications made of it: — the *licence*, or say permission, the *remuneration*, or allowance, and the *compulsion*, all together. By a pre-established harmony, evidenced by usage, the judge stands determined, that, if the defendant, having received, or been supposed to have received, this same *first* link in the chain of *pleadings*, does not, on his part, add to it a *second*, he the judge, will cause seizure and sale to be made of the defendant's goods; and the proceeds, to the amount in question, delivered to the plaintiff. What the dishonest plaintiff knew from the first was—that for no *lie*, by which he gave, as above, commencement to the suit, would he be punishable: here, then, was the *allowance*, or say *licence:* what he also knew was — that, if the first tissue of lies failed of being, in appointed time, answered by the defendant in correspondently mendacious prescribed form, — he, the dishonest plaintiff, thus rendered so by the judge, by the invitation virtually given to him and everybody by this his hired instrument and accomplice,—would receive the contemplated

reward for his dishonesty: here, then, comes the remuneration and the compulsion: the remuneration thus given by the judge to the dishonest plaintiff: the compulsion thus applied by the judge to the defendant; and so on through any number of *links* in the chain of pleadings.

Had justice been the end aimed at, would this have been the course? No: but a very different one. No sale of dear-bought strips of parchment, befouled by judge's lies. From the very first, no suit commenced but by an interview between the suitor and the judge. No ear would the judge have lent to any person in the character of plaintiff, but on condition, that, in case of mendacity, he should be subjected to punishment, including in case of damage to an individual, burthen of compensation. Thus, then, vanishes the distinction between *pleadings* and *evidence;* and of the dishonest suits that then were, and now are, born and triumph, a vast proportion would have been killed in embryo. Of whatever, on this occasion, were said by the applicant, not a syllable that would not be received and set down as *evidence:* received, exactly as if from a stranger to the suit; and so in the case of the defendant. Wherever it were worth while, in the thus written evidence, the now written, and above-described unpunishably mendacious pleadings, would have their so uncontrovertibly beneficial substitute.

Now for Mendacity practised. — By mendacity is understood the quality exemplified by any discourses by which wilful falsehood is uttered: habit of mendacity, the habit of uttering such discourse.

Uttered by men at large, wilful falsehood is termed wilful falsehood: uttered by a judge as such, it is termed fiction: understand *judicial fiction.*

Poetical fiction is one thing: judicial fiction, another. Poetical fiction has for its purpose delectation: producing, in an appropriate shape, pleasure: the purpose here a good one, or no other is so. To a bad purpose it is indeed capable of being applied, as discourse in every shape is. But in its general nature, when given for what it is, it is innoxious, and in proportion to the pleasure it affords, beneficent: no deception does it produce, or aim at producing. So much for poetical fiction, now for judicial.

In every instance, it had and has for its purpose, pillage: object, the gaining power; means, deception. It is a portion of wilful falsehood, uttered by a judge, for the purpose of producing deception; and, by that deception, acquiescence or exercise given by him to power not belonging to him by law.

If, by a lie, be understood a wilful falsehood, uttered for an evil purpose, to what species of discourse could it be applied with more indisputable propriety, than to the discourse of a judge, uttered for an evil purpose?

How much to be regretted, that for the designation of the sweet and innocent on the one hand, the caustic and poisonous on the other, the same appellation should be continually in use; it is as if the two substances, sugar and arsenic, were neither of them known by any other name than *sugar!* But the abuse made of this recommendatory word is itself a *device:* an introductory one, stuck upon the principal one.

So much for the delusion; now for the criminality.

Obtaining money by false pretences is a crime: a crime which, except where licensed by public functionaries, or uttered by them, to and for the benefit of one another, is punished with infamous punishment. Power, in so far as obtained by fiction, is power obtained by some false pretence: and what judicial fiction, that was ever uttered, was uttered for any other purpose? What judicial fiction, by which its purpose has been answered, has failed of being productive of this effect?

If obtaining money by false pretences is an immoral practice, can obtaining power by false pretences be anything less so? If silver and gold are to be had the one for the other, so can power and money; if then either has value, has not the other likewise?

If obtaining, or endeavouring to obtain money by false pretences is an act presenting a well-grounded demand for legal punishment, so in its origin, at any rate, was not the act of obtaining, or endeavouring to obtain, by those same means, power? power, whether in its own shape, or in this, or that other shape?

As to the period — the time at which this device had its commencement in practice can scarcely have been so early as the original period so often mentioned: lies are the instruments rather of weakness, than of strength; they who had all power in their hands, had little need of lies for the obtaining of it.

On every occasion, on which any one of these lies was for the first time uttered and applied to use, persons of two or three distinguishable classes may be seen, to whom, in different shapes, wrong was thus done: the functionary or functionaries, whose power was, by and in proportion to the power thus gained, invaded and diminished: and the people at large, in so far as they became sufferers by the use made of it: which is what, in almost every instance, not to say in every instance, upon examination, they would be seen to be.

In the present instance, functionaries, or say authorities, of two classes are discernible.

The authority, from which the power was thus filched, was either that of the sovereign, their common superordinate — or the co-ordinate authority, viz. that of some judge or judges, co-ordinate with that of the stealers. In a certain way, by the deception thus put upon him, the sovereign was a party wronged, in so far as power was taken from any judge to whom it had by him been given. But this was a wrong little if at all felt: the only wrong felt certainly and in any considerable degree, was that done to another judge or set of judges.

Say *stealing*, or what is equivalent, as being shorter than to say obtaining under false pretences. In each instance, if deception, and by means of it power-stealing, was not the object of the lie, object it had none; it was an effect without a cause.

By a man in a high situation, a lie told for the purpose of getting what he had already, or could get without difficulty without a lie — such conduct is not in human nature.

As to sufferings, nominal only, as above observed, were they on the part of the supreme and omnipotent functionary; here, supposing them real, no sooner had they been felt, than they would have been made to cease, and no memorial of them would have reached us.

Not so in the case of learned brethren: stealing power from them, was stealing fees. Accordingly, when, towards the close of the seventeenth century, a theft in this shape had been committed, war broke out in Westminster-hall, and fictions, money-snatching lies, were the weapons. But of this under the head of *Jurisdiction-splitting*.

There, all the while on his throne sat the king: that king, Charles II. But, to a Charles II., not to speak of a king in the abstract, war between judge and judge for fees, was war between dog and dog for a bone.

Now come the real sufferers — the people. Subjection to arbitrary power is an evil, or nothing is; an evil, and that an all-comprehensive one.

Now, every power thus acquired is in its essence arbitrary; for, if to the purpose of obtaining anything valuable — call it money, call it power — allowance is given to a man, on any occasion, at pleasure, to come out with a lie; which done, the power becomes his, what is it he cannot do? For where is the occasion on which a lie cannot be told? And, in particular, on the whole expanse of the field of law, no limits being assigned, where is the lie which, if, in his conception, any purpose of his, whatever it be, will be answered by it, may not be told?

Accordingly, wilful falsehoods, more palpably repugnant to truth, were never uttered, than may, by all who choose to see it, be seen to have been uttered, and for the purpose of obtaining power, by English judges.

Take, for example, the common recovery fiction; a tissue of lies, such, that to convey to a non-lawyer any comprehensive conception of it, would require an indefinite multitude of pages, after the reading of which it would be conceived confusedly or not at all. But what belongs to the present purpose will be as intelligible as it is undeniable.

1. Descriptions of persons stolen from, three:—1. Children, in whose favour a mass of immoveable property had been intended to be made secure against alienation; eventual subject-matter of this property, no less than the soil of all England: 2. Landowners, by whom, by payment of the fees exacted from them, was purchased of the judges of the court in question — the Common Pleas — that power of alienation which they ought to have gratis, or not at all: 3. Professional men — conveyancers (the whole fraternity of them)—despoiled in this way of a share of such their business, by the intrusion of these judges.

Now for the falsehood — the artful and shameless predatory falsehood — by which all these exploits were performed. Officiating at all times in the court in which these judges were sitting, was a functionary, styled *the crier of the court*; his function, calling individuals, in proportion as their attendance was required, into the presence of the judges. Sole source and means of his subsistence, fees; in magnitude, the aggregate of them correspondent to the nature of his function. Behold now the fiction. A quantity of parchment having been soiled by a compound of absurdities and falsehoods, prepared for the purpose, and fees in proportion received for the same, a decision was by these same judges pronounced, declaring the restriction taken off, and the proprietors so far free to alienate: to the parties respectively despoiled, a pretended equivalent being given, of which presently. Persons whom it was wanted for — (not to speak of persons not yet *in esse*, and in whose instance accordingly disappointment might be prevented from taking place) young persons in existence in indefinite multitudes, from whom, on the several occasions in question, their property, though as yet but in expectancy, was thus taken — taken by these same judges, whose duty it was to secure it to them. Now for the equivalent. To all persons thus circumstanced, it was thought meet to administer satisfaction: it was by a speech to the following effect, that the healing balm was applied: — "Children, we take your estate from you, but for the loss of it, you will not be the worse. Here is Mr. *Moreland*," (that was always the gentleman's name:) "he happens to have an estate of exactly the same value: this we will take from him, and it shall be your's."

Exactly in this way, on one and the same

day, were estates in any number disposed of at the appointed price by these supposed, and by suitors intituled, ministers of justice. Such was the proceeding then: and such it continues to this day.*

There we have one fiction: now for a parallel to it. Once upon a time, in Fairy land, in the court of a certain judge, under the seat of the crier of the court, was a gold mine. On a touch given to the seat by a wand, kept for the purpose by the judge, out flowed at any time a quantity of gold ready melted, into an appropriate receptacle, and on the turning of a cock, stopt. Here we have a fiction, which, if it be a silly, is at any rate an innocent one. Be it ever so silly, is there anything in it more palpably repugnant to truth than in that predatory and flagitious one.

Two points, could they be but settled, might here afford to curiosity its aliment: —

1. Point the first. Those fictions, such as they are, in what number could they be picked up like toad-stools, in the field of common law! By dozens at any rate, or by scores, to go no farther, they might be counted.

Roman lawyers too, have theirs. But for every Rome-bred fiction, a dozen English-bred ones, to speak within compass, might be found.

2. Point the second. Birth-day of the fiction — latest hatched, and let fly to prey upon the people — was it the day next before that of the first newspaper? — was it that of the last witch burnt or hanged? Be the species of imposition what it may — be the field of deception what it may, a time there will always be, after which new impostures will not grow on it. But, as to the time when those which have root at present will be weeded out, this question is a very different one.

By the operation here in question, good (will it be said?) good, in a certain shape, was done? — good, for example, of the nature of that which it belongs to political economy and constitutional law to give indication? Be it so. But, be it ever so great, good, considered as actually resulting, is, on this occasion, nothing to the purpose: only lest it should be thought to be overlooked, is mention thus made of it: the only good which is to the purpose is the good intended.

Lastly, as to certain ulterior uses of this species of poetry to the reverend and learned poets. Those of the coarsest and most obvious sort — power-stealing and money-stealing — having been already brought to view.

To complete the catalogue, require to be added, — 1. Benefit from the double fountain, constituted as above; 2. Benefit from the thickening thus given to confusion.

I. First, as to the double fountain. A juggler there was, and a fountain he had, out of which at command flowed wine, red or white, without mixture. This reality, for such it is, may help to explain one use, and that a universally applying one; the purpose, whatever it be, is it by the truth that it is best served? The argument is drawn from the truth side. Is it by the fiction? Side from which the argument is drawn, the falsehood.

Such being the emblem, now for the application. Be the mess what it may, truth is always the substance of it; lies, how coarse and gross soever, but the *seasoning*. The purpose, whatever it be — is it by the fiction that it is best served? From the fiction side it is that the argument is drawn: is it by the truth alone that the purpose can be served? It is to the truth, with whatsoever reluctance, that recourse is had. Thus *quacunque via data*, as the law Latin phrase has it, the point is gained.

2. Lastly, as to the benefit from the confusion that, proportioned to the extent to which non-conception, or what is so much better, misconception in regard to the rule of action, has place on the part of those who are made to suffer, in proportion to their non-compliance with it, the particular interest of Judge and Co. is served: these are propositions, of which the whole substance of this our humble petition is one continual proof. That the giving to these two so intimately connected states of things the whole policy of this class of politicians, has from first to last been universally directed, is another proposition, to which the same proof applies itself with the same force. But to say, that by and in proportion to the degree of confusion that has place in the aggregate mass of ideas produced by the aggregate mass of discourse, expressed in relation to the subject and received, this same purpose is answered, is but to say the same thing in other words.

If, to the intelligibility of that which is here said about unintelligibility, any addition can be made by the sort of imagery so much in request, — out of each one of Judge and Co.'s double fountains, rises at all times a thick fog. Each one after another will be brought to view, namely, under the head of device the eleventh — *Decision on grounds foreign to the merits.*

V. *Device the Fifth — Oaths for the establishment of the Mendacity, necessitated.*

That the ceremony of an oath is the instrument by means of which the licence to commit mendacity is effected, has just been stated. Now as to the mode of applying the instrument to this purpose. Nothing can be more simple. On the occasion of any statement, about to be made, on a juridical occasion, or for an eventually juridical purpose, is it your wish (you being a judge) that mendacity should *not* have place, you cause the individual by whom the statement is made, to have,

* The form was abolished by 3 & 4 W. IV. c. 74, (28th August 1833.)—*Ed.*

just before the making of it, borne his part in this same ceremony: on the occasion of any statement so made, is it your wish that mendacity *should* have place, you abstain from requiring the performance of this same ceremony: and, at the same time, you give to the naked statement so made, whatsoever effect it suits your purpose to give to it.

Not that it was for this purpose that the ceremony itself was invented: for, along with the *time*, the *cause* of its invention is lost in the darkness of the early ages: all that, on this occasion, is meant is — that it is for the purpose of organizing mendacity, and giving to that vice every practical increase, that the ceremony, being found already in use, was taken advantage of.

Properties, which we shall now present to the view of the Honourable House this instrument as possessing, are the following: they consist in its being —

1. *Needless;* to wit, for the purpose of repressing mendacity on judicial occasions, or for a judicial purpose.

2. *Inefficacious*, on these same occasions.

3. *Mischievous*, to an enormous extent, in a variety of ways.

4. *Inconsistent* with the received notions belonging to *natural religion*.

5. *Anti-scriptural*.

6. *Useful to Judge and Co.*, eminently subservient to their particular and sinister interest; and as such cherished by them.

First, as to *needlessness*. For the needlessness of this ceremony, on the sort of occasion, or for the sort of purpose in question, we humbly call to witness your Honourable House: prime in legislation is in effect the part borne by you. In your hands is the public purse: with you, with few and casual exceptions, laws originate. Take any law whatsoever, in the scale of importance what, in comparison with the power of making that same law, is the power of exercising, in relation to it, an act of judicature, reversable of course at pleasure by the powers by which the law was enacted? Well then — when at the instance of the Honourable House a law has been enacted — this same law, was it passed upon determinate grounds, or was it *groundless?* To style it *groundless*, would be to pass condemnation on it. It having determinate grounds, and those grounds appropriate, of what then are those same grounds composed?

Answer: Of matters of fact, and nothing else; for nothing else is there of which they can be composed. On the occasion in question, these same matters of fact, whatsoever they may be, will respectively either be considered as already sufficiently notorious, or not: if not, then will the existence of them, for the purpose of this same act of legisiation, as for the purpose of any act of judicature, be considered as requiring to be established by evidence. No otherwise than in as far as thus grounded and warranted, can any law whatever be anything better than an act of wanton despotism. Most laudable accordingly —unmatched in any other country upon earth, is the scrutinizing attention and perseverance so constantly employed by your Honourable House in the collection of appropriate witnesses, and the elicitation of their testimony. Of their testimony? and in what shape? In that which is the very best possible: *oral* examination, subject to counter-interrogation from all quarters, re-examination at any time, and with the maximum of correctness secured to it by being minuted down as elicited, and subjected afterwards to correction by the individual from whom it emanated. Behold here a mode of proceeding, dictated by a real desire to elicit true, and appropriately complete, information: the desire accompanied with a thorough knowledge of the most effectual means for the accomplishment of it.

Well then. For securing to each article of information thus elicited, the same character of truth at the hands of each witness, putting out of the question the spiritual motive, what are the temporal motives which, in the shape of eventual punishment, in case of mendacity, your Honourable House makes application of? Answer: in a direct shape, imprisonment only; with or without *fine:* in an unimmediate and indirect shape, fine, for the extraction of which the imprisonment is the only instrument.

Now then, as to the ceremony called *swearing*, or *taking an oath*. Whether it be for want of power, whether it be for want of will — (the single case of election judicature excepted, and *that* no otherwise than in pursuance of a special act of parliament) — no use does your Honourable House ever make of this same ceremony. What follows? Does mendacity find the Honourable House impotent? On the contrary: much more effectual is its power against this vice than that of ordinary judicature, with its expensive prosecution and severer punishment. Why? Because, while the mode of elicitation employed is such as needs not the assistance of the ceremony, its mode of procedure is such, as is able to cause the punishment to follow instantaneously upon the offence. Yet, has it as yet a weakness, to which consistency will one day, it is hoped, apply the obvious remedy. Standing at the highest pitch at the commencement of each parliament, it sinks (this indispensable power) as the parliament advances in age, till, at last, it is sunk in utter decrepitude.

After such a demonstration of the needlessness of this ceremony, but for the importance and novelty of the subject, other proofs might be put aside, as being themselves needless: important the subject may well be styled, or

no other is so: for, so long as this ceremony has place, justice, to the prodigious extent that will be seen, is absolutely incapable of having place.

To the benefit of the testimony of Quakers, ever since the year 1696, justice has, without the benefit of this ceremony, by various statutes, been admitted, in cases called *civil* cases: and now, by a statute of 1828, in cases called *criminal* and *penal* cases. If, then, as a security against mendacity, the ceremony is indispensable in the case of all other men, can it be needless or safely omitted in the case of these?

Moreover, on any one of these occasions, what is there to hinder a non-Quaker from personating a Quaker? Clothed in the habit, and speaking the language of a Quaker, suppose a non-Quaker, by his evidence, giving success to Doe, in a case in which, otherwise, it would have gone to Roe. The imposture afterwards discovered, would success change hands?

On the evidence of an impostor of this sort, suppose a man convicted of murder, and executed. The imposture being afterwards discovered, would the felony be transmuted into a non-felony, and the hanging operation be, in law language, declared void?

Not only in the case of a class of men so well known as this of *Quakers*, but in the case of a class comparatively so little known as that of *Moravians*, has justice been in possession of this same benefit, ever since the year 1749, by statute 22 Geo. II. ch. 30.

Of detriment to justice from this allowance, in what instance was any suspicion ever entertained? Was not the assuredness of the absence of all increased danger of mendacity, from this admission, in *civil* cases, — was not *this* the cause of the extension given to it in criminal cases?

So much for *needlessness*.

2. Now as to *inefficiency*. Considered with reference to the purpose here in question, oaths stand distinguished into *assertory* and *promissory*: but, in both cases, the sanction is precisely the same. Take then, for example, oaths of the *promissory* sort: because these stand clear of various points of contestation, which have place in the case of *assertory* oaths: whereas in the case of a promissory oath, if violation has place, seldom does the fact of the violation stand exposed to doubt.

Now then for the examples. Example the first: Protestant sees in Ireland, bishops 22: archbishops 4: together 26. Previously to investiture, oath taken by every bishop, promising to see that in every parish within his diocese, a school of a certain description shall have place. Of the aggregate of these oaths, what, in the year 1825, was the aggregate fruit? Performances 782: perjuries 480. When received and communicated—(so at least says the solemn office)—when received and communicated, behold the preservative power of the Holy Ghost in these minds against perjury.

Example the second: In England, through the university of Oxford, pass one half of the 12,000 or 13,000 Church-of-England clergy; through the university of Cambridge the other half. In *Oxford*, pre-eminent in uselessness and frivolousness, a volume of statutes receives at entrance from each member, in every article of it, as security for observance, an appropriate promissory oath.

Now for the effect. On no day does any one of these academics tread on the pavement of that same holy city, without trampling upon some one or more of these oaths. Held up to the inexorably conniving eyes of the constituted authorities, has been the contempt thus put upon this ceremony, — held up, not by strangers only, but by members — not by lay-members only, but by clerical members: — for more than the last half century, by a clerical member — Vicesimus Knox — in a work, editions of which, in number between 20 or 30 are in circulation.

So much for promissory oaths. To come back to assertory oaths. Stand forward *custom-house oaths*.* For demonstration of the inefficiency — the uncontested and incontestible inefficiency — these two words supersede volumes: exacted to a vast extent the assertion of facts, of which in the nature of things it is not possible that the assertor should have had any knowledge. How prodigious the benefit to finance and trade, if *asseveration*, with appropriate punishment in case of mendacity, were substituted, and by adverse interrogation, a defendant made subjectible to a limited loss, as by equity interrogation he is to loss of all he has! Thus simple is the arrangement, by which, without the illusory assistance of the thus universally contemned ceremony, finance might be made to assume a new and healthful face; trade be made to receive changes in great variety, generally regarded as beneficial; and pounds, by hundreds of thousands a-year — not to say millions, be saved.

So much for needlessness and inefficaciousness.

3. Now as to *mischievousness*. Of the immense mass of evil constantly flowing from this source, a part, and but a part — has as yet been presented to the view of the Honourable House: — namely, under the last head, the head of *mendacity*.

1. By so simple a process as the declining to act a part in this ceremony, any man, who has been the sole percipient witness to a crime may, whatever be that crime—murder, or still worse — after appearing as summoned, give impunity to it: without the trouble or for-

* *Vide supra*, p. 188.

mality, producing thus the effect of pardon: sharing thus with his majesty this branch of the prerogative, and even in cases, in which his said majesty stands debarred from exercising it.

2. By the same easy process, in a case called *civil*, may any man give to any man any estate of any other man.

Not quite so easy (says somebody.) For would not this be a contempt? and would he not of course be committed?

May be so: but when the murderer has been let off, or the man in the right has lost his cause, would the commitment last for life? — in a word, what would become of it?

But to no such peril need he expose himself. A process there is which is still easier: "*I am an atheist.*" He need but pronounce these four words. The pardon is sealed; or Doe's estate is given to Roe.

But of this, more, presently.

Behold now perjury established by law: established on the most extensive — established on an all-comprehensive scale: established by impunity, coupled with remuneration altogether irresistible. Such is the effect of *test oaths*. Of these oaths, some are or may be assertory, some promissory, some assertory and promissory in one: declaration of opinions entertained: declaration of course of actions determined to be pursued, or of opinion determined to be entertained: to be entertained, spite of all conviction and persuasion to the contrary. For perjury in this shape, premium, the highest given for good desert in any shape, — for appropriate aptitude, in the official situations, the most richly remunerated. Of the whole of the expenditure of government, a vast proportion thus employed in raising annual and continually increasing crops of perjuries; and while such is the reward, impunity is absolute and secure.

Oh the admirable security! A man who, with or without pecuniary reward, has, for any number of years together as above, been leading a life of perjury, is to be regarded — not only as capable, but as almost sure, of being stopt from giving his acceptance to any of the very richest rewards in the king's gift: stopt by the fear of no more than what, if anything, may follow from one single instance of perjury, and that a completely unpunishable one — made to refuse for example, an archbishoprick of Canterbury, with its £25,000 a-year, and its *et cæteras* upon *et cæteras*!!!

Sowing oaths and reaping perjuries is a mode of husbandry, in a particular instance, affected to be disapproved by Blackstone. But in that instance, compared with this, the scale is that of a garden-pot to that of a field.

Bidding thus high for perjury, is it possible that of the self-same man it should be the sincere wish to prevent it?

What, then (says somebody,) the fear of punishment at the hands of the Almighty,— is that to be set down as nothing? The answer is, yes; on this particular occasion, as amounting absolutely to nothing: but of this presently.

By the inducting of these same reverend, right reverend, and most reverend, self-styled perjurers (for so they are specially declared to be by these their own statutes,) has been established the national school of church of England orthodoxy.

These things considered, and the use made of oaths on judicial occasions,— Westminster Hall, not to mention its near neighbourhood, may it not be styled the great *National School* of perjury?

What, then (says somebody,) are all *tests* meant to be thus condemned? Oh no: tests, for declarations of the party concurred with, by a man, on this or that occasion, may be useful: useful, and even necessary; and at any rate unexceptionable: in some cases by acceptance, in other cases by non-acceptance, useful indications may be afforded. On an occasion of this sort, who are they whom you choose to be considered as siding with? This is the question, propounded by the call to join in the declaration; and in this case no mendacity need have place.

4. So much for needlessness, inefficiency, and mischievousness. Now as to repugnance to natural religion.

This supposed punishment for the profanation, on whom is the infliction of it supposed to depend? On the Almighty? No; but, in the first instance at any rate, on man alone. No oath tendered, no offence is committed: no offence committed, on no man punishment inflicted. According to the oath-employing theory, man is the master, the Almighty the servant. In respect to the treatment to be given to the supposed liar, the Almighty is not left to his own choice. In the event in question, at the requisition of the human, the divine functionary is made to inflict an extra punishment. Exactly of a piece with the authority exercised by a chief-justice of the King's Bench over the sheriff of a county, is the authority there, by every man who has purchased it, pretended to be exercised over the Almighty. In Westminster-Hall procedure, the chief-justice is the magisterial officer; the sheriff of the county in question a ministerial officer, acting under him: a written instrument, called *a writ*, the medium of communication, through which, to the subordinate, the command of his superordinate is signified.

In the case of the *oath*, the man by whom the oath is administered performs the part of the chief-justice; the Almighty, that of the sheriff acting under him; and the kiss given to the book performs the service of the writ.

Is it by a country attorney, dignified by

the title of Master-extraordinary in Chancery — is it by this personage that the oath is administered? In this case, it is the attorney that the Almighty has for his master now; and by the shilling paid to the attorney — by this shilling it is, that the Almighty is hired.

On the expectation of the addition thus to be produced to the spiritual punishment appointed by the Almighty of himself for mendacity — on this alone depends the whole of the molebill of advantage, if any such there be, capable of being set against the mountain of evil that has just been brought to view.

Of mendacity, variable is the maleficence, on a scale corresponding to that of the maleficent act, of which it is made, or endeavoured to be made, the instrument: of the profanation of the ceremony, the guilt, if any, is one and the same.

Infinitely diversified in respect of degree of importance, are the purposes to which this instrument, such as it is, is wont to be applied. Does it, in its nature, possess any capacity of being, by its variability in quantity, and thence in form, accommodated to these several purposes? Not any.

The punishment, if any, the infliction of which is expected, is in every instance the same, for which the attorney, for his shilling, draws upon the Almighty. This draught, will it be honoured?

But (says somebody,) for binding a man's attention to the importance of the occasion, some mark of distinction between an assertion that *is*, and one that is *not* intended to be legally operative — may it not be of use? Yes. doubtless. But for this purpose, no such preposterous pretended assumption of authority over the Creator by the creature is either necessary, or in any degree useful. By the word *asseveration*, the appropriate extraordinary application of the faculty of attention is already sufficiently indicated.

On occasions of the sort in question, in the instance of the people called Quakers, by special allowance from the legislature, already in use is the word *affirmation*. This word might not improperly serve. But the word *asseveration* is, perhaps, in some degree, preferable; since it presents to view more assuredly than does the word *affirmation*, the idea of a special degree of attention and decision beyond what has place on ordinary and comparatively unimportant occasions.

5. Now as to *repugnancy to Scripture*. — "Thou shalt not take the name of the Lord thy God in vain:" so says the second of the ten commandments. "*Swear not at all:*" these are the words of Jesus, as reported in the gospels. "*Above all things, swear not:*" these are the words of St. James, in his Epistle. But for texts of Scripture, when troublesome, there are rules of interpretation: one of them is, the rule of contraries.

Says God to man, — thou shalt not perform any such ceremony. Says man to God, — I do perform this ceremony, and thou shalt punish every instance of disregard to it. Suppose the Almighty prepared to punish every or any instance of disregard to this ceremony, you suppose him employed in sanctioning disobedience to his own express commandments.

If, to the compellers of such oaths, punishment, in a life to come, were at all an object of consideration, the punishment attached to disobedience — to commandments thus plain and positive, would produce in their minds an impression rather more efficacious, than what has been seen produced, as above, by the punishment supposed to be attached to a disregard for the purely human and recently invented ceremony.

But, for the use of so useful an instrument of profitable maleficence, no punishment is too great to be encountered. "The punishment," say they, "what matters it? Turning aside from it, we extinguish it."

The thus imagined supernatural punishment, has it really any efficiency in the character of an auxiliary to human punishment, and a security against maleficence in its several shapes? If yes, why thus narrow the benefit producible by it?—why not make out at once a complete list of maleficent acts of all sorts, fit to be, in due form of law, converted into offences? This done, collectively or upon occasion severally, the promissory declaration may be attached to them, and the book kissed.

This done, and not before, consistency will take the place of its opposite; and so far the practice of swearing, against conviction, cease.

6. So much for needlessness, inefficiency, repugnancy to natural religion, repugnancy to revealed religion, as well as abundancy in mischievousness. Now for *use to Judge and Co.* — Multifarious and extensive is this use. The capital use, establishment of the mendacity-licence, with the increase given to the profit by written pleadings, keeps pace with the mischievousness of the practice, and has been already brought to view.

But the use of oaths to the partnership does not stop here. The greater the quantity of immorality, in all shapes, but more particularly in that of injustice, the greater the quantity of the profits: for, the more immorality, the more transgressions; the more transgressions, the more suits; the more suits, the more fees. This series presents a *clue*, or say a *key*, which comes to the same thing, to all the arrangements which enter into the composition of judge-made law.

By the confusion with which the field of law has thus been covered, observance of oaths, or breach of oaths, according as countenanced by a judge, being regarded as a merit and a duty, thus it is that judges have come to be regarded as invested with the power of converting *right* into *wrong*, and *wrong* into

right: right and wrong following continually the finger (as the phrase is) of the law.

Decency, as well as that inadequate degree of efficiency which their own particular interest requires to be given to those parts of the law on which personal security depends, join in necessitating, as above, some restraint on mendacity in certain cases: at the same time, their official and professional interest requires that, to a vast extent, that same security should be inefficient. By a compromise between these two antagonising interests, has been produced the form of the prosecution for perjury.

Not applying the temporal punishment but in the comparatively small number of instances in which it has been preceded by this ceremony, and application of it requiring a separate suit, with two witnesses to give effect to it — a suit, of which the expense to the prosecutor is great, and the advantage, in case of success, limited to the few cases in which it has for its effect the reversal of the judgment grounded on the false testimony, they thus make a show, and no more than a show, of wishing to extinguish the vice, to the propagation of which, so far as profitable to them, their endeavours have been so diligently and successfully directed. Bating this rare case, ere any such prosecution can have been instituted, signal must have been the triumph of passion over prudence. Among ten thousand perjuries committed, is there so much as one punished? For *ten* might have been put a hundred, or for a hundred a thousand.

Built originally for feasting, Westminster Hall is thus become the great national school for perjury.

Picking out men, in whose breasts the aversion to mendacity is strongest and most incontestible — picking out these men, and expelling them from the witness's box with ignominy stampt on their characters — is another service extracted by Judge and Co. from this ceremony.

In the instance of one half of that order of men, who are so richly paid for professing to impress morality, in all its shapes, upon the conduct of the rest of the community, the universality of habitual perjury has been already brought to view.

One of those suits, which the existing system engenders in such multitudes — a suit in which one of the parties is conscious of being in the wrong, has (suppose) place. One percipient witness there is, who being tendered for admission as a narrating witness, is on good grounds believed by this dishonest suitor to be an atheist. But, atheist as he is, nothing does it happen to him to have, or to be so much as supposed to have, to bias him, and warp his testimony one way or the other: and no man is maleficent without a motive.

Answering to his call, this man places himself in the witness's box. The learned counsel has his instructions. "Sir," says he, "do you believe in a God?" What follows? Answering falsely, the proposed witness is admitted; he cannot be rejected: answering truly, he is silenced, and turned out with ignominy. The martyr to virtue, the martyr to veracity, receives the treatment given to a convicted felon.

The atheist was unseen and silent. These lawyers drag him into broad daylight, and force into the public mind the poison from this confessing and thus corrupting tongue.

What will not the advocate do — what will not the fee-fed judge support him in doing for their fees? An inquisition, this high — commission court, all over. For the purpose of thus punishing the offence, they create it: themselves accessaries before the fact: themselves suborners.

Individuals they thus invest with the power of pardon — thus do these sworn guardians of the king's prerogative. Individuals?—and what individuals? In the first place, these same atheists; in the next place, all Christians and other theists, whom they have succeeded in rendering mendacious enough to pretend to be atheists.

A murderer (suppose) is on his trial: necessary to conviction is the testimony of an individual, who has just mounted the box. Before the oath is tendered,—"First (may it please your lordship,) let me ask this man a question," says the counsel for the murderer. Thereupon comes the dialogue. Counsel — "Sir, do you believe in a God?" Proposed witness — "No, sir." Judge — "Away with him; his evidence is inadmissible." Out walk they, arm-in-arm, murderer and atheist together, laughing: murderer, to commit other murders, pregnant with other fees.

Robbers in gangs go about (suppose,) and to suppress testimony, murdering all whom they rob, and all who are supposed by them to have seen or to be about to see them rob. On being taken, one of them (suppose) turns king's evidence. Question by prisoner or prisoner's counsel — Do you believe in a God? Answer in the negative: off goes the witness, and off with him goes the prisoner. Will it be said, that the condition, not having been performed, that is to say, the procurement of the defendant's conviction, the pardon will not be granted, and the accomplice will be hanged? Not he, indeed. No sooner does any one of these murderers enter the witness box, than by Judge and Co., if not an atheist already, he is thus converted to atheism. The consequence is — the necessary evidence being thus excluded, the virtual pardon of the whole gang — this man along with the rest — takes place of course.

Another use to Judge and Co., from the

all-corrupting ceremony: the shilling per oath received for the administration thereof: the shillings in front, with pounds, in many cases, in the back-ground. Hence, patronage, with reference to the situations in which this profit is received. Considerations these by no means to be neglected. What is there that is ever overlooked in the account of fees?

Another case. An instrument in the hand of hypocrisy — an instrument to cajole a jury with — is another character in which the ceremony is of special use to a judge. It forms a charm, by the fence of which, transgression in every shape is rendered impossible to him. Gentlemen of the jury, you are upon your oaths: I am upon mine. Mine calls upon me to do so and so, quoth the ermined hypocrite: out comes thereupon whatever happens to suit his purpose. On any adequately great occasion, appropriate gesture — application of hand to bosom, might give increase to stage effect. Speaking of a noble lord, as having been saying so and so — "My lords," said a judge once, "he smote that sacred tabernacle of truth, his bosom." Your oath? What oath? Who ever saw it?—where is it to be seen, unless it be on the back of the roll on which is written the body of your common law? One of three things. Either you never took any such oath at all, or if you did, it was either a nugatory or a maleficent one: a premise, for example, on all occasions to make sacrifice of all other interests to the interest of the ruling one. An old printed book there is, intituled The Book of Oaths: and of one or other of these two descriptions are the several oaths therein stated as taken by judges. At any rate, whatever oath you took, if any, in no one's presence was it taken but that of him by whom it was administered. In what better light, therefore, than that of a fresh act of mendacity and imposture, can any such mention of an oath be ever regarded by a reflecting juryman?

So much for the punishment of mendacity under the existing system. Now suppose a system substituted, having for its ends in view the ends of justice. Great beyond present possibility of conception would be the security which against fraud and deception would be given, by attaching punishment to mendacity. In whatever instance mendacity had been uttered, either on a judicial occasion or for a judicial purpose, punishment would stand attached to it of course. Against fraud and maleficent deception, to whatsoever purpose endeavoured to be applied, great not only beyond example but beyond conception would be the security thus afforded. Oaths and perjuries abolished,—punishment for mendacity would be at liberty to bend itself, and would of course bend itself to the form of every offence, to every modification of which the evil of an offence is susceptible. Judicial is the *occasion*, in so far as it is in the course of a suit actually commenced, that the assertion is elicited: judicial the *purpose*, that is to say, the eventual purpose, where the assertion is uttered for the purpose of being eventually employed as evidence, should ever a suit have place, on the occasion of which it might serve as evidence.

Take, for instance, a false *recital* in a conveyance, in an engagement meant to be obligatory; false vouchers in accounts.

Thus, in the case of a voucher. Receptor in account with Creditor, produces from Venditor or from Faber a *voucher*, acknowledging the receipt of a sum of money for goods furnished to Receptor, to be employed in the service of Creditor. In fact, he has received no more than half the sum: the other half being undue profit divided between them. Under the existing system, on evidence in no better shape, are accounts audited: evidence received as conclusive, the mere production of a receipt. To Creditor in this case, what difference does it make whether it be by a forged receipt that he is defrauded of this money, or by a falsely asserting, though genuine receipt, as above? Yes, for no such false assertion is there any punishment appointed under the name of punishment: under the name of satisfaction, refunding of the undue profit, yes. But for this a suit in equity is necessary; a suit in which, for the recovery of five shillings, at the end of five years, or in case of appeal ten years, creditors may have to advance £500 or £1000, losing in case of success a fourth part of the money in unallowed costs. On no better security against fraud than this, have public accountants received discharges for hundreds of millions of pounds.

On the ground of any such *voucher*, any such *Venditor* or *Faber* might be made examinable it any time, and in case of original fraud, as above, or false asseveration in the course of the examination, punishable according to the quality and quantity of the wrong.

Fraudulently or otherwise mendaciously false recital in conveyances, or in engagements meant to be obligatory, (including contracts) — falsehood in the recitals of instruments, in which registration of obligatory dealings of either of those two classes is performed, newspaper or other paper under false denominations, printed and circulated for the purpose of influencing the prices of public securities — all these vehicles of falsehood would thus receive a mode and degree of repression at present unexampled and until now unconceived.

Thus intimate is the connexion between legalized swearing and fraud: in a word, as has been seen, between this compulsorily and irresistibly legalized vice, and crime and immorality in every imaginable shape: with lawyer's profit from every imaginable source.

Swear not at all! — cease to take the name of the Lord in vain! By these commandments, repeated every day at table, with or without the grace before meat in every house, more would be done towards the extinction of crime and immorality, than would ever be done by preaching, though every house were to have a pulpit in it.

How long will men continue to seek to cause God to apply a punishment he had no intention of applying? — To cause him!—say rather to *force* him, leaving only the time and the quantum to his choice? For, on the ceremony performed, the everlasting punishment is assumed to follow as a thing of course.

When will legislators and judges cease to be suborners of perjury? — of perjury on an all-comprehensive scale?

The passion for these universal oaths, and (which is the same thing) for perjuries, can there be no means of administering to its gratification without the boundless expenditure of crime, immorality, and consequent misery? If without the special and specific mischief produced in so many shapes as above, simple oaths, with correspondent perjuries, will content them, perjuries of both sorts, assertory and promissory, they may have their fill of. Each man may perform them for himself, and he may have strings of beads to tell them on: each man may thus perform them for himself; or, in proportion to his opulence, he may, for adequate remuneration, cause them, in any desirable quantity, to be performed by others. By means of pre-established signs, he might even for this same purpose press into the service the powers of machinery and steam. He might perform them in the Chinese style: and for every oath taken, have a saucer broken: and thus, at no greater expense than the sacrifice of religion, morality, and happiness, confer a benefit on that branch of trade. For the loss by *assertory* perjuries, *amateurs* might indemnify themselves by increase given to the stock of promissory ones.

If this be not agreeable, let all hitherto published editions of the Bible be called in, and appropriately amended editions substituted. Out of, "Thou shalt not take the name of the Lord thy God in vain," let be omitted the word *not*. For "Swear not at all," after the word *swear*, let be inserted the words *swear and cause swear, whatever you will*, whenever by you or yours anything is to be got by it. Thus would be wiped clean the irreligiousness of the practice; and nothing would be left in it worse than the immorality of it.

Not inconsiderable is the service so recently rendered by the extending to cases styled criminal, the admission so long ago given to Quakers' and Moravians' evidence in cases styled civil. Yet how inadequate, and thence how inconsistent the remedy, if it stops there?

Finally, in whatsoever is now deemed and taken to be perjury, guilt, over and above that which consists in the mendacity, either has or has not place: if guilt there is none, then, by the supposition, the ceremony by which the mendacity is constituted perjury, is of no use: if guilt there is, we humbly pray that whatsoever by the Honourable House can be done, may be done, towards exonerating us and the rest of his Majesty's subjects from the burthen of it: and in particular, such of us, whose destiny on any occasion it may be to serve as jurymen: for if in perjury there may be guilt, we see not how, by men's sitting in a jury-box, it is converted into innocence.

Accordingly, that which, in relation to this subject we pray for, in conclusion, is — that by the substitution of the words *affirm* and *affirmation*, or *asseverate* and *asseveration*, to the words *swear* and *oath*, all persons at whose hands, on a judicial occasion, any declaration in relation to a matter of fact is elicited or received, may be put upon the same footing as, in and by the statute of the 9th of his present Majesty, [George IV.] chapter 32, Quakers and Moravians are, in respect of matters therein mentioned: and that on no occasion on which, in the course of a trial, a person is called upon to deliver evidence, any question be put to him, having for its object the causing him to make declaration of any opinion entertained by him on the subject of religion.

Now for the petty juryman's oath. Assertory or promissory? — to which class shall it be aggregated? As the interval between promise and performance lessens, the promissory approaches to, till at last it coincides with, the assertory. Assertory, beyond doubt, is the *witness's* oath: as clearly would be the *juryman's*, if the verdict followed upon the hearing of each witness's testimony as promptly as the delivery of that same testimony follows upon the performance of the swearing ceremony.

Of this instrument, the inefficiency as to the production of the professedly desired effect — that is to say, the exclusion of mendacity, — its efficiency, on the contrary, as to the production of the opposite effect, with the perjury in addition to it, — these are the only results, the exhibition of which belongs, in strictness, to the present purpose. But another point, too closely connected with this, and too important to be passed over, is its *mischievousness*. Another distinguishable point is the absurdity of this part of the institution: and without bringing this likewise into view, neither the inefficiency, nor the whole of the misefficiency, can be brought to view,

Indeed, to show the absurdity of the notion is to show its mischievousness: at any rate, if intellectual imbecility in the public mind

be a mischief, and adherence to gross absurdity a proof of it.

Mark well the state of the case. Men acting together in a body, *twelve:* business of the body, declaration of an opinion on two matters taken in conjunction — matter of fact and matter of law.

First, as to the matter of fact. Subject-matter of the declaration, a question between A and B: A being either an individual, or a functionary acting in behalf of the public. On a certain occasion, at the time and place in question, did an individual fact, belonging to a certain species of facts, take place or not? This species of fact — is it of the number of those in relation to which provision has been and continues to be made by such or such a portion of the law?

Of this sort in every case are two points, in relation to which, each man of the twelve is called upon to deliver his opinion, as expressed in one or other of two propositions, one or the other of which, they being mutually contradictory propositions, cannot fail of being true: laying out of the question, for simplicity's sake, the rare case of a sort of verdict called *special.*

Yes; on the question of law: for, the comparatively rare case of a special verdict excepted, in the subject-matter of the opinion declared is the matter of law included, as often as a verdict is delivered. Say, in cases called *civil,* but implicitly: but in cases called *penal,* as often as the verdict is against the defendant, most explicitly. For, in the legal sense of the word *guilty* (which is the only sense here in question,) be the act what it may, doing it is not being *guilty,* unless that act stands prohibited by some law: really existing law in the case of written statute law: feigned to exist in the case of *common law,* in this one of the four or five different meanings of the word.

Be the subject-matter of opinion what it may — be the class of men what it may — be the number of them what it may, — to cause them to be all of one mind, all you have to do is to put into their heads the opinion it is your wish to see adopted, and having stowed them in a jury-chamber, keep them till they are tired of being there.

In what abundance might not time, labour, and argument — all these valuable commodities — thus be saved? Take the uncertainty of the law: this, if not a proper subject for redress, is at any rate, in no inconsiderable degree, an actual subject-matter of complaint. Make but the full use of the jury-boxes, or though it were but of one of them, this uncertainty may at command be changed into unanimity; and this unanimity, if not the same thing as the certainty, will at any rate be the best evidence of it; or, at any rate, the best consolation for the want of it.

Having taken them up from these several courts — taken them up from the seat of aggregate wisdom, which they occupy altogether, — pass through this machine the twelve judges, you save arguments before these sages; pass through it the members of the House of Lords, you save arguments on appeals, and writs of error before the House of Lords.

To return to the unlearned twelve. To each one of them, application is at the same time made of two distinguishable, two widely different, instruments.

One is the *oath.* Of the application made of this instrument, what in this case is the object? To secure, in this instance, verity to that declaration of his which is about to be made.

The other instrument is a certain quantity of *pain:* pain, according as he and the others comport themselves; increasing, in a quantity proportioned to the duration of it, from the slightest imaginable uneasiness, to a torment such as, if endured, would extinguish life; but which no man in the situation in question was ever known, or so much as supposed, to have endured.

A compound of several pains is this same pain: principal ingredients, the pains of hunger and thirst: slighted, and first commencing ingredient, the pain of privation, consisting in the non-exercise of whatsoever other occupations would have been more agreeable.

Under these circumstances, if so it be that, as soon as the evidence with the judge's observations on it, if any, are at a close, either of the two mutually opposite opinions is really entertained by all of them, on the part of no one of them does any breach of his oath take place; as little, on the part of any one of them, does pain in any degree take place: the verdict is pronounced by the foreman, without their going out of the box.

But, as often as, instead of their delivering their verdict, they withdraw into the room prepared for them, then it is that a difference of opinion has place; and then it is that, on the part of all twelve of them together, the appropriate operations begin to be performed. Then it is that, to an indefinite amount, all twelve are made to suffer, that that same number of them, from one to eleven, may be made, and until they have been made, to utter a wilful falsehood, and thus break the oath which they have just been made to take, under the notion of its preventing them from uttering this same falsehood.

True it is, that if any one of them there be, in whose instance pain has had the effect of causing him no longer to entertain the opinion first entertained by him, but to entertain, instead of it, the opposite opinion declared by the verdict, no such falsehood will in his instance have been uttered. But exists there that person who can really believe that, in

the case in question, pain can have any such effect?

And, even supposing the effect produced, where is the benefit to justice? Of the two opposite verdicts, to which is it that the pain will produce the transition? for it presses upon the whole number of them. Upon the adopters of the verdict eventually delivered, as well as upon the opposers of it; and whichever of the verdicts it be that is thus adopted, what reason can there be for regarding this as being more likely than its opposite to be the proper one?

But though to produce a change in the opinion really entertained is a thing which pain cannot do in the instance of any one, yet to produce a change in the opinion declared to be entertained, is a thing which pain, and this very pain, not only can do in the instance of some one of them, but is even known not unfrequently to have done in the instance of all but one.

Of this so triumphantly trumpeted, so anxiously preserved, and so zealously propagated unanimity, what, then, as often as the jury quits the box, is the result? Answer — Two doses: one composed of pains, the other of wilful falsehood and perjury. The dose of falsehood, some number, from one to eleven, are made to swallow; the dose of pains, all twelve: all this without the least imaginable benefit to justice.

The verdict, with the opinion expressed by it, being given, comes now the question — in what way is it, that, on that side, and not on the other, the victory terminated? Answer — In this: the foreman, having been the object of the general choice, the person the most likely to prepare for acceptance one of the two verdicts, is this one. If, then, by any one or more of them the opposite opinion is entertained, declaration will of course be made of it by all those who entertain it, and the number on each side will thus be seen at once.

Whereupon it is, that if to any one of them a reason occurs, which, as appears to him, has not been brought to view by advocate or judge, naturally and generally, every one who has in his own mind any such reason, will out with it. What, in this case, does doubtless now and then happen is, that after all the observations delivered by the experienced advocates and judge together, have failed to produce the impression in question, an observation pronounced by one of the comparatively inexperienced jury has succeeded. But this case, though sometimes exemplified, cannot be stated as the common one.

The oath to make a man speak true: the torture to make him speak false. Such is the contrivance. A two-horse cart; the horses set back to back, with a cart between them: in this behold its parallel.

A contest (and such a contest!) between will and will: and by whom set on foot? By the creator of the unanimity part of the institution. And by whom kept up? By the supporters of it.

In the declaration of the opposing will, others, in any proportion to the whole number, may have joined; thereupon has the pain continued to be endured by all, till those on one side, unable any longer to endure it, have gone over to the other side.

Exists there that man, in whose opinion, by the power of pain, any such change of the judgment from one side to the other ever had place?

Exists there that man, in whose opinion, on any future occasion, any such effect from such a cause is probable?

So much for opinion: now for experience. Experience says, that, while in this assembly, in which there is torture to produce it, unanimity thus constantly takes place, — in another, in which there is no torture to produce it, instances in abundance are continually happening in which it does not take place.

It is by the institution of another sort of jury — the grand jury — that the experience is furnished. Every day, where this institution has place, before these same petty jurymen, in number exactly twelve, had pronounced their pretended unanimous opinion on that same question, they, under the name of grand jurymen, in number from thirteen to twenty-four inclusive, with dissentient voices, in any number, from one to eleven inclusive, had been pronouncing theirs.

Yet, only on one side does a grand jury hear evidence: on the two opposite sides the petty jury. In the opposition and conflict which in the petty jury case has place, is there anything that is of a nature to render coincidence of opinion the more assured? — more assured than when the evidence is all on one side?

Now, if in either of these cases there could be the shadow of a reason for the compulsory unanimity, in which case would it be? In the case of the grand jury assuredly, rather than in that of the petty jury. Why? Because, in the grand jury, as above, only on one side is evidence ever heard: in the petty jury, constantly on both sides. Is it by conflict in evidence that agreement in opinion is more apt to be produced than by agreement in evidence?

Such being the absurdity of the device, such its inefficiency to every good purpose, behold now the bad purpose in relation to which it is *efficient*. One case alone excepted, of which presently.

1. First, as to *justice*. Assured possessor of the irresistible evil, the fabled wishing-cap is yours: enter in triumph into any jury-box you please: on your will depends the verdict.

Compared with this power of yours, what is the influence of the most skilful judge? He can but cajole: you necessitate. Behold how sure your success, how small the cost of it. Every time the jury have staid out of court so much as an hour, not to say every time they have gone out of court at all — there has been a difference of opinion, and next to a certainty, perjury. Scarcely more than one instance of endurance of the uneasiness for so long a term as forty-eight hours has ever been known. Yours being the verdict, behold in this sufferance the limits to the utmost price you can have to pay for it.

Man of desperate fortunes! would you retrieve them? In civil cases, as often as it happens to you to be on a jury, and the value at stake is such as makes it worth your while, if on the wrong side there is consciousness of wrong, and the case next to a desperate one, the more depraved the character of the wrong-doer, the more assured you will be that an offer to share it with you will not be refused.

In penal cases, keep on the look-out for the richest criminals.

Defendant, with another man's money in your hands, look well over the jury list: — observe whether there be not this or that one of them, whose surely effectual service may be gained by appropriate liberality.

Murderer, incendiary, go through the whole list: if one experiment fails, pass on to another: you have nothing to lose by it — you have everything to gain by it.

2. Now, as to *religion*. Behold the effect here.

Lowering the efficiency of the religious sanction in its natural and genuine state, clear of this spurious pretended additament,—is or is not this an evil? In scarcely more than one known instance has the force of the oath had the effect of causing the torture to be endured for so long a time as eight-and-forty hours. Thus weak being the religious sanction, even with the benefit of this reinforcement, what would be the amount of its influence, if operating alone? Next to nothing would decidedly be the answer, were it not for the torture. But, by the torture, this argument in proof of the inefficiency is, at any rate, weakened, if not repelled altogether. For, from the insufficiency of the religious sanction to prevail over pain when screwed up to such a pitch as to extinguish life, it follows not that any such insufficiency has place where no such pain has place. Oath or no oath, perjury or no perjury, scarcely will any man apprehend for himself, at the hands of the Almighty, punishment for non-fulfilment of an obligation, for performance of which the physical capacity will, in his eyes, be altogether wanting: at any rate, scarcely will it to any man appear probable, that, to any considerable extent, the obligation will, in quality of a cause of such endurance, have been capable of producing any considerable effect: or accordingly, that it is consistent with Almighty wisdom to employ it to such a purpose. And, as to the cessation of the endurance after a duration comparatively so short, why make an attempt, the success of which is plainly impossible?

That in these considerations there is more or less of reason, will hardly be disputed. But from this it follows not, that they will present themselves to everybody: and, in every eye, to which this, or something to this effect, does not present itself, the efficiency of the religious sanction in its natural state will, to say the least, be, by this supposed reinforcement, greatly weakened, not to say reduced to nothing.

By these considerations is moreover suggested a course of experiment, by which, on the degree of efficiency, if any, on the part of this ceremony, no small light would, it should seem, be cast. Continuing to apply the torture as at present in all instances, apply the ceremony in some, omitting it in others: then let observation be made of the proportionable number of instances, in which the jurors betake themselves to the retiring room, and of those in which they do *not*: and in regard to those instances in which they do give this proof of the efficiency of the religious (not forgetting the moral) sanction, minute down the length of the endurance.

Of those right reverend persons, who, as above, had sworn, each of them, to set up and endow schools, the majority are known to have actually forborne to commit the correspondent perjury. But, as to jurors, on the part of all those who have ever sworn to forbear to express an opinion opposite to their own, notwithstanding all torture — in other words, to forbear from perjuring themselves, what instance was ever known of such forbearance? Conclusion this. Supposed or pretended effect of this spurious additament strengthening the instrument it is added to. real effect, weakening it.

Mark now the sort of charity which the unanimity part of the institution, and the use of such an instrument as the oath for the production of the effect, proves and inculcates: proves to have existence on the part of the creators and preservers of it: inculcates into those minds to whom the force of it is applied. Numbers (suppose) eleven on one side, one alone on the other. Says the one of them now to himself — Do what the others may, never will I perjure myself. Saying this, does he not at the same time say this also: Yes — these my brethren, eleven in number — all these I will make perjure themselves: damned I will not be myself: but damned shall be these my brethren. If the word damned be *not* the proper one, substitute, ye who object to it, substitute that which *is*.

Ye — if after this exposure any such there be — ye who, persisting in the application made of the ceremony: in the application made of it, in any case, and in the case of jurymen's oaths in particular, — do really believe, that, for every instance of perjury, a punishment over and above that for simple mendacity, will in the life to come be suffered by the delinquent — think of the magnitude of the evil, which you are endeavouring to perpetuate! Take balance in hand, and say — whether, by the application thus made of the ceremony, it is in the nature of the case, that good, in any such quantity as to outweigh the evil, should be produced.

Take any man by whom, in any instance, this perjury has been committed: either he believes that punishment in the life to come will attach upon him, or he does not: if not, then is the oath in its professed character, in the instance in question, completely ineffective: if he does, think then of the suffering which it produces. Inefficient or mischievous (and who can say to what a degree mischievous?) such is the alternative.

Now for the benefit from this unanimity: meaning the benefit — if not to the creators, to the preservers and promoters.

To entertain any such opinion, as that, by pain, unanimity of real opinion, on the part of every or any twelve men is actually produced, may be or not be in the power of human folly. But to produce the desire and the endeavour to *cause* this same opinion to be entertained, is but too much in the power, and too abundantly in the practice of human knavery. To the existing system of English-bred jury law in general, and to this part of it in particular, continues to be ascribed this miracle. Then comes the practical use. A system by which such miracles are at all times wrought, and these miracles such delightful ones, — how impossible is it to change it for the better! how dangerous to meddle with it!

In so conspicuous a part as this, no change in the English-bred judiciary procedure system could be so made or attempted, without drawing the public eye upon the whole of it: but, let but the public eye pervade the whole of it, behold, it falls to pieces.

Such of Judge and Co. was the end in view, and such to Judge and Co. has been the use. Such moreover it will continue to be, so long as jurors shall continue to be made of clay, and judges the potters working it. But under their hands, thanks to their carelessness, it has grown and continues to grow stiffer and stiffer. While teaching these their pupils thus to contemn the law, these sages have themselves fallen to such a degree into contempt, that the scholars themselves have at length begun to contemn their own teachers. Every day is this contempt increasing: and if so it be, that contempt of a bad system is necessary to the substitution of a good one, a more beneficial result than these two conjoined, cannot be wished for.

Thanks to this carelessness? Yes: for it is by arbitrary power above, that the arbitrary power below, superior on many occasions to that of its creator, has as hath been seen been created. By arbitrary power in one quarter or the other, thus it is that everything is done: in both, the law is trampled upon. Of the mixture of oaths, perjury, and torture, this is one effect therefore of the oaths.

Blind and speechless acquiescence, under an absurd tyranny, being the result, by what process of reasoning were the inventors led to expect it? Answer — By the following: On each occasion, the portion of law, to which the jury are called upon to join in giving execution and effect, being supposed beneficial, — as for the purpose of the argument it cannot but be, one thing desirable is, of course, that, in the instance in question, and by means of the verdict pronounced, execution and effect should be accordingly given to it. But, at the same time, another thing alike desirable is, that *that* same desirable effect being produced, it shall, by the people at large, be believed to be so.

This desirable belief, if produced, in what way then will it be produced? In this way. In the body of men thus selected, the people at large behold their own representatives, and moreover their own reporters. Better ground for their persuasion than the report made by these their reporters, they cannot have. On the occasion in question, they (the people) have not themselves had the means of informing themselves: these, their representatives and reporters, *have*.

Now then, how to make the people believe that, on every occasion on which a petty jury is employed, everything is thus as it should be? Such was the problem. The solution, this: On this, as on any other occasion, take any considerable number of unobjectionable persons for judges, — the larger the portion of those who agree in the same opinion, the greater is found by experience the probability of their being in the right: thence it is, that, on every occasion, in the majority of such men, the confidence is greater than in the minority. Still, however, remains this same minority by which, in proportion to its number, this so desirable confidence is diminished, and prevented from being entire. Now then, let but this troublesome obstacle be entirely done away, entire is thereby rendered this so desirable confidence. Well then — apply the torture, the minority vanishes.

Another feature belonging to jury-trial is the secresy of which the retiring chamber is the scene. But, not belonging to the subject of oaths, this feature belongs not to the present purpose.

Would but the mendacity content them, this they might have without the oath: without the oath, the torture would give it them at least as surely as with. But, for such important purposes as above, this same instrument of imposition was needed: and on the same occasion in particular, to make men by the terrific appearance shut their eyes, and prevent them from seeing into the absurdity of the contrivance.

In the shape of an exception, allusion has been made to one good effect of the power of conquest thus given to the strongest of the twelve wills. The good effect is this. A law (suppose) has place, by which, were execution and effect given to it, maleficence would be infused into the whole frame of government: absolutism, for example, with all its attendant miseries. Individuals at the same time are not altogether wanting, each of whom, if, in his capacity of juryman, the law in question were brought before him for execution, would oppose to it this irresistible will, would in a word apply his *veto* to it. By the king and the lords, this veto is applicable to the laws in the first stage of their progress — the stage of legislation: by juries, in the last stage — the stage of judicature.

In the case of offences styled *political*, and in these perhaps alone, is its usefulness indispensable, as it is concentrative: meaning, by political offences, those by which the effective power of the functionaries exercising in chief the powers of government, is struck at: treason, for example, sedition, and political defamation: meaning, in this last case, acts striking at the reputation of men in official situations, considered as such, in which class of cases, constituting as it does the main, not to say sole security against absolutism, rather than part with it, better it were to endure much more than the evil of it in all other cases.

That by the fear of punishment at the hands of the Almighty, scarcely endurance to the amount of two days has ever been produced, is indeed matter of demonstration: since, as above observed, to that amount, in no instance whatsoever, has the effect been produced at any time.

But that, in instances relatively not unfrequent, by sympathy for the happiness of the community at large, corroborated by antipathy towards men regarded as acting in hostility to it, instances of endurance such as have actually been productive of this good effect, there seems reason sufficient to believe to have had place.

To this generous self-devotion does the country appear to be altogether indebted for such portion of actual though unsanctioned and ever precarious liberty, sole security for all other salutary liberties the press is in possession of.

That but to too great an extent the above-mentioned disastrous supposition stands verified, is but too undeniable. Under the existing system, take away this irregular power of the jury, neither are laws wanting, nor power conjoined with will, to give execution and effect to them, sufficient to convert the form of government, such as it is, into as perfect an absolutism as anybody could desire.

Determined instruments of absolutism, — and, as such, with scarce an exception, determined and inexorable enemies of the press, have at all times been — all English judges: accordingly, on every occasion of a prosecution for a so-called libel, in which censure in any shape has been applied to the conduct of any public functionary, in that same proportion has been the constancy of the directions given by them to juries, to pronounce for their verdict the word *guilty*. Yet every now and then has an English jury refused to render itself in another sense *guilty*, by the utterance of that same momentous word.

Now then, admitting the effect to be good, in what way—by what *means*—has this same determined will been productive of it? By contributing to give execution and effect to the body of the law? No; but by successful obstruction and frustration applied to it.

Accordingly, in this instance is it any part of our prayer that the torture, thus applied, should be taken off? No; but that so long as the form of government continues what it is, it should be continued.

One set of cases there is, in which the real, or what comes to the same thing, the supposed interest of the ruling few, is in a state of but too decided opposition to that of the subject many; and to the whole extent of these cases, our prayer is, that this same state of things, anarchical as it is, may continue unimpaired.

Thus much for elucidation: to make out any catalogue of these cases, belongs not to this place.

Will it be said, that in some of these cases it is to the direction of the judge, and not to the evidence, that the verdict has been in opposition? Perhaps so. But, at any rate, neither are cases wanting, in which, with the salutary view in question, verdicts have been given by jurors in the very teeth of evidence. Upon their continuing prepared upon occasion so to do, depends, so to us it appears, all possibility of escape from the jaws of absolutism.

Not that we are not fully sensible that, in various particulars, the power of the jury is, in the nature of the institution, of essential, not to say indispensable, service to justice; in particular, in respect of the obligation it lays the judge under, of giving reasons for his conduct, and bestowing on the question the degree of attention necessary for that

purpose; as also, the furnishing to him such information respecting various grounds for it, as he could not otherwise be in possession of. But, as an ultimate test of truth, that the least should possess a better chance than the most exercised and instructed judgment, of being the most apt, is a notion which we do not feel it in our power to embrace. But on the subject of juries, more will be to be said under another head.

VI. *Device the Sixth—Delay, in groundless and boundless lengths, established.*

Delay (need it be said) is denial, while it lasts. One third of the year, justice, pretended, as above, to be administered: the two other thirds, not so much as pretended. Such was the state of things determined upon, and produced accordingly.

A calculation was made: one third of the year was found to suffice for getting into the law granary all the grist that the country could supply it with; that was the time for the mill to go: remained the two other thirds on which the miller was free to amuse himself. "One third of the year," said he, "will suffice for getting in all the money that the whole people can muster for laying out in our shops: work for one third of the year, amusement for the two other thirds." Sittings out of term time belonged not to those days. At the present day, while some judges, as far as gout will let them, sit at ease, other judges overwork and overfatten themselves. But so managed is the work, that the delay, with its profits and its miseries, continues undiminished. Moreover, by the delay was left a correspondent interval for incidents capable of being made productive of fresh fees.

What is the day on which justice ought to sleep? — what the hour? That on which injustice does so too.

Look now to other departments; see how things would go on if like delay were there: What if, during one part of the year, taxes being collected, during the other two thirds they were left uncollected?

What if, during one third of the year, the naval force being on duty, during the other two thirds the seas were left open to enemies and pirates?

What if, during one third of the year, the army being on duty, the other two thirds the country were left undefended, while enemies were at the work of plunderage and devastation?

From internal enemies, for want of justice, the sufferings of the people would not be so great as from external enemies for want of defence. True; but a suffering's not being the greatest possible, was no reason why men should be subjected to it. How came it that, in those days, while men were guarded in some sort against sufferings at the hands of external, they were subjected to it at the hands of internal evil-doers? Answer — By the suffering produced by the foreign adversaries these judges would themselves have been sufferers. By the sufferings produced by the domestic adversaries they were gainers.

Look now to professions.

What if, on being called in by a man with a stone in his bladder, a surgeon were to say to him, "Lie there and suffer while I am amusing myself: four months hence I may perhaps come and cut you." By surgeons this is not said. No surgeon has a monopoly of surgery. Judges do say this. Judges, in small numbers, have among them the monopoly of the commodity sold under the name of *justice*.

In the eyes of Blackstone, all this evil is so much good. First, because it was done so early in the good old times. But, above all, because it was done by lawyers. To a husbandman, during harvest time, attendance in a court, he observed, would have been attended with inconvenience. True: and this was one reason why, instead of two or three hundred miles, he should have had but ten or twelve miles to travel ere he reached it. Attendance to get back a farming stock unjustly taken, would have been inconvenient. True: but leaving it in the hands of the depredator, and thus leaving the harvest to rot in the ground, was still more inconvenient. So much for harvest time. But all the year is not harvest time, and the whole remainder of the year had its judge's sabbaths as well as harvest time: sabbaths, not of days, but of months continuance.

What the people *now* suffer from the system of delay thus organized, — what the judges now get by it, belongs not in strictness to the present head. But neither is it without claim to notice.

Chiefly to the cases called *civil* applies what is above. Now for cases called *penal*. Behold here the interest of judges changing, and with it, of course, the provision made by them.

In penal cases, and in particular in those most highly penal, not a day in the year but courts are open to receive complaint: and, complaint made, men complained against, guilty and innocent together, are put into jail. How so? Because, as above observed, judges have bodies, judges have gouts, judges have lives: so also as well as other men, have all those who, in point of interest, are in any particular way connected with them: bodies, goods, and lives, which, but for some such protection, might be wounded, carried off, or destroyed.

When in jail, there they are, guilty and innocent together, from two days to 182, as chance pleases. How so? Because, to judges and those who are in league with judges,

whether in this case a man is innocent or guilty — stays in jail two days or 182 days, makes no difference: not to speak of counties and cases in which the 182 days may be doubled.

Oh yes: to Judge and Co. the time does make a difference: for, from the difference between the two days and the 182 days, come fees. Jail produces bailing, and bailing produces fees. Innocent or guilty, those who can find bail and fees, are let out: those who are too poor to find either, stay in. How can it be otherwise? Under English judge-made law, the only unpardonable crime is poverty.

Contamination! contamination! Between uncompleted examination and definitive trial, whole days, weeks, and months, are rolling on: contamination thickening all the while. Complaints of this evil not sparing: not least abundant by this or that one, of those by whom it is caused. He, who can remove the evil, and does not, causes, if not the commencement, at any rate the continuance of it. Of such contaminators, the most insensible, the most obdurate, the most inexorable, the most inexcusable, are they not legislators?

All contamination in prisons — all unintended sufferings in prisons — all possibility of escape from prisons, — they might prevent, and they will not. Why will they not? One word, *Panopticon*, explains the mystery. Pitt gave acceptance to it while he lived — gave support to it, such as he was able. Royal vengeance stopped it. Interest, sinister and all-powerful interest, opposed to everything good in proportion as it is good, keeps it still out of existence. A little while, and the inventors will, both of them, have the merit of being dead: when their eyes cannot be rejoiced at the sight of it, then will it rise from under the oppression which has thus long kept it down: then will the public eye open itself: then will public indignation kindle; then will the public voice break out afresh, and resistance no longer be deemed compatible with prudence. To conclude — Delay gave ease: delay bred incidents: incidents were made to breed fees: so it must have been in those early times: so it is in these present times. Ease and fees — fruits so sweet, both together from one plant: how felicitous!

Two causes there are, by either of which, without blame in any shape to anything or anybody — to a judge, or to the system of procedure — delay, to any amount, may be necessitated.

Of these causes, those whose interest is served by the delay, and by the system in which it is an inseparable ingredient, take of course their advantage, and do what depends upon them towards making the people believe that the existing delay is alike necessary in the cases to which these causes do not apply, as in those in which they do.

1. One is, non-forthcomingness of evidence: of this cause, the influence, it is manifest, extends itself to every case, to every species of suit.

2. The other is *complication*: complicatedness of the subject-matter or other circumstances belonging to the suit. This applies not beyond a particular class of suits: but, in the nature of things, this is unavoidably but too extensive. Subject-matter (suppose) a mass of property: in the course of the suit, operations to be performed on it, collection and distribution of the component parts of that same mass: as in the case of the disposal made of the effects of a person lately deceased, or of a person in a state of insolvency. Over what parts of the globe may it not happen to the subject-matter, on the one hand, to both debtors and sharers in the balance, if any, on the other, to be dispersed? So likewise where, without death, on suspicion of insolvency, demand is made of an account, by a party to transactions to which it may happen to have been not less complicated than the above.

In a country cause, by this or that accident — absence, for example, of a material witness — trial, without loss of cause to the party in the right, is at that moment rendered impossible. What is the consequence? The cause goes off for six months: expense of witnesses, counsel, attorneys, all disbursed in waste: and at the end of the six months, if it happens to it to be on the *remanet* list, for another six months — unless the party is ruined by the preparation for the first trial, profit to Judge and Co. upon the second, and perhaps upon a third. Necessary or not, motion for a new trial, with additional profit thereupon, according to circumstances.

Suppose now the court sitting all the year round: the accident of one day may now be repaired the next.

Of further particulars as to the evil and causes of delay, mention will require to be made under the head of *Jurisdiction Split*.

VII. *Device the Seventh — Precipitation Necessitated.*

Under the fee-gathering system, states of things the most opposite — delay and precipitation — concur in giving existence to the desired effect.

Of delay, the mode of establishment and the relative usefulness have just been seen. The precipitation grew by degrees out of the delay. At the early period in question, scarcely could it have been contemplated: not but that from the first, precipitation, with its evils, were among the natural effects of the opposite abuse. But at present it flourishes, and on each occasion produces its fruits: and only for the purpose of the present time is the

state of the system at that early period here brought to view.

Be the business what it may, if, of the time that might and should have been allotted to it, a portion is kept unemployed, proportioned to the increase given to the quantity of the business will be whatever hurry takes place in the course of the time which the business is allowed to occupy.

Suits at common law, and as such brought for trial, or pretended so to be brought before a jury, may be divided into two classes: those of which it is known that, by possibility, they may be tried by a jury, and those of which it is known that they can not.

Cause of incapacity of being brought under the cognizance of a jury, complexity. Of modes of complexity capable of producing this effect, examples are the following: —

1. Multitude of facts which, by one and the same demand or defence are undertaken to be proved or disproved on one or both sides: for example, in an account.

2. Multitude of witnesses liable to be examined in relation to each alleged fact: especially if *alibi* evidence, or evidence as to character, is received.

These sources, however, are but two of a multitude of distinguishable sources, out of which complexity is in use to arise.

Suit called on, jury in box, the impossibility of trial is universally recognised. What follows? Off the suit goes to arbitration. Aptly learned and well-wigged gentlemen in plenty, there they sit, all known as such by the judge. Choice is made of one for each side, or the same for both. Now again comes the time for delay. Five-guineas a-day, or less, secures and maximizes it: exemplary are then the care and deliberation. For securing the whole of the mass of evidence which the case affords, the powers are not now altogether adequate. But neither would they have been found so, had the trial gone on: for under the existing system, no assemblage of powers, adequate to the purpose, has place anywhere.

Setting aside this deficiency and premium for delay, here may be seen the natural mode of procedure. Supposing the judge but one, with an audience sufficient in quality and quantity to compose a bridle for his discretion, and he salaried instead of fee'd, here would everything be as it should be. But the misfortune is — that, instead of being substituted to the elsewhere established technical mode of procedure, the natural mode is here added to it, leaving the burthen unalleviated.

So much for all jury causes taken together. Enter now the topographical distinction — *country* causes and *town* causes. The country outweighing the town causes in the scientific *mixture* of delay and precipitation.

Country causes are dispatched post haste: the whole machinery running round in a circuit. At each assize, — upon the blind fixation principle (of which presently,) — allotment made of a certain number of days: — two, three, or four, as the case may be: business, for which two or three hours might have been more than sufficient, or two or three months less than sufficient, crammed into the compass of those same two or three days. By leaving evidence unheard, arguments undelivered or unattended to, — one part, of the whole number of suits set down for trial, is now made to undergo that process: the other part remain unheard, and are called *remanets* or *remanents*. Six months is the shortest interval before they come upon the carpet a second time; that is to say, if come they do: for, various are the causes, by any of which they may be extinguished: deperition of evidence, drainage of purse, death: death, in a certain case, whether natural or no, not the less violent because lingering: offence, manslaughter (to say no worse): manslaughter by Judge and Co. with their delay, expense, and vexation: substitutes — how safe, convenient, and profitable! — to poison, sword, and dagger.

Remanets increase and multiply. Begotten by the remanets of spring, are the remanets of Michaelmas.

Eminently instructive would be a regularly published list of all of them.

Now as to *town* causes. Here the scene changes. Of delay, considerably less: thence, so of precipitation. For trials, in the whole of England, with the exception of the metropolis, assizes in the year no more than two; in some counties, no more than one. In the metropolis, *terms* four: with sittings before, in, and after each: total, twelve: and in each of the twelve, upon an average, more days than in an assize. Under these circumstances, in the metropolis, may be seen a choice made: not made by one Hercules, but by two of them. The one who has fewest causes gets most ease: the one who has most causes gets most fees. Health suffers: and martyrdom to duty is the name given to canine appetite for fees. Velocity in horsemanship sees itself rivalled by velocity in judicature.

Mark now how admirably well adapted is this compound of delay and precipitation to the ends of judicature. Carried on to the last link through the chain of useless proceedings, has been the corresponding chain of fees: so much for *fees*. Pending, the suit may have been for years, not a syllable all the while suffered to present itself to the mind of a judge, such is the fruit of the *mechanical* mode of judicature (of which presently) substituted to the *rational*: so much for ease. Then comes the agreeable circumstance of making recommendation of the man or men, by whom, though without the name, the functions of

the judge are then to be performed: so much for *patronage*.

The boots that fitted all legs — the *seven-leagued* boots — may be seen in fable. The judicial establishment which, should parliament so please, would fit itself to all quantities of business, may be seen, as below, in sober truth. *Deputation* is the name of the instrument, by which this quality would be given to it. *Powers of deputation* is the name given to the so highly elastic and self-accommodating boots.

VIII. *Device the Eighth — Blind Fixation of Times for Judicial Operations.*

Where flexibility is necessary, fixation made. Example — most prominent, effective, and instructive — that which is afforded by the appointment of days for attendance at the judgment seat: attendance of parties, or witnesses, or both.

Commencement (suppose) given to the suit, — as, in every case, it might and should be — by application, made by some person in quality of suitor, or, in case of necessity, by some substitute of his, at the sitting of the judge. Where a suit is intended (simple information without suit being out of the question,) the applicant demanding, that he himself, or some person mentioned by him, be admitted as pursuer against some person as proposed defendant. If, on this first occasion, the suit for the commencement of which the application is thus made, is not dismissed, some day for the continuance of it will of course be to be appointed: some day thereafter, say for example, in ordinary cases, the second, third, or fourth day, as it may happen, distance in place taken into account, reckoning from the day on which the originating application is made. So much as to what should be the practice: now as to what it is. In pursuance of the device here in question — say upon the *blind fixation principle*, the existing system appoints for all cases without distinction some one day by general rule: for each subsequent operation, fifteen days suppose, reckoning from the one last preceding. Blind fixation, say without difficulty: for, blind, when made by a universally and indiscriminately applying rule, such fixation cannot but be.

As to the originating application, — in neither case can in the nature of things any fixed day for it have place. Such application imports actual appearance of a suitor in the presence of the judge. But, applied to the existing system, how erroneous is this conception! For, such is the established etiquette, to no suitor, till the day on which conclusion is to be given to the suit, is his lordship at home. What then is the mode by which commencement is given to it? Answer, this: By a person acting as an attorney for the plaintiff, the appropriate instrument, *the writ* (as the phrase is,) is *taken out:* in plain English, bought at the justice shop of a clerk, employed by the judge, in serving out the commodity to every one who will pay for it, no question asked. The writ itself is a mass of unintelligible absurdity: but the result is, that if the proposed defendant does not constitute himself such by appointing an attorney to act for him in the correspondent manner, the judge will, at his charge, cause the plaintiff to have whatever it is that he demands.

In regard to defendants, setting aside for the present the question as to witnesses, co-pursuers, and co-defendants, what is clear is, that, sooner or later, to each proposed defendant the faculty ought to be afforded of acting, if so disposed, in contestation of the demand made at his charge, by the individual admitted as pursuer. But to his so acting, a necessary condition is, that he should have received notice of his being called upon so to act. To his being so, another condition necessary is, that a mandate for the purpose should have been delivered at some individual spot, which, at that same moment, is the place of his abode

Now then, as to this same abode, it may be within a stone's throw of the justice-chamber, or without, being out of the local jurisdiction of the court, at about three hundred miles distance, more or less. In the first case, supposing the defendant at home, and the judge at home, and disposed to hear him, two or three minutes would suffice for the production of the necessary intercourse, *i. e.* the interview between him and the judge in the chamber of justice; in the other case, twice as many *days* would not suffice. What, on an occasion of this sort, does judicial practice? It appoints one and the same day for every individual defendant; no regard paid to distance in place or quantity of time necessary to be expended in passing from the one place to the other.

So much for the *operation*, — the operation of attending, or, as the word is, *appearing*. Now for instruments. Where all that is to be done at the appointed day is appearance in a chamber mentioned, short in comparison is the interval that may suffice for adequate notice: and such and no other was the state of things at the primeval period all along in view. But where, within the appointed interval, an ulterior operation comes to be performed, that operation consisting in the drawing up and exhibition of a written instrument of a certain sort; in a word, say one of the sort of *written* instruments above spoken of by the name of *written pleadings;* widely different now is the aspect of the case: the time requisite may, upon a scale of indefinite length, be varied by the quantity of writing necessary, not to speak of an unconjecturable variety of other circumstances. And thus it is, that in

this case, so it may be that by the next day may be afforded notice long enough, or by the next day two months, notice not long enough. Against the notice's being neither too long nor not long enough, the chances, it is evident, are, so to speak, as infinity to one.

Of the individual in whose instance attendance is requisite to be paid, or some other operation performed, — some instrument already in existence and established, or some written instrument, not already in existence, to be framed, and thereupon exhibited, the residence is, as above, *supposed* to be within the jurisdiction of the court. But, on the other hand, it may, in fact, be in another hemisphere; and so it frequently is. No matter, the day is fixed, — fixed by the general rule: fifteen days (suppose) are given for a proposed witness, with his evidence, to make his appearance from British India, or Australia, or Peru.

Such, then, under the direction of this blind fixation principle, is the practice throughout the whole of the existing system of the technical judicature. It was the natural, and, in a manner, the necessary result of the virtual and effective exclusion which, at the primeval period all along in question, by the exclusive use of a language foreign to them, was put upon the parties.

Of this same blindness, behold now the consequences: for in these consequences may be seen the *motive*,—the motive, by the operation of which the eyes were at that time shut, and to this day continue to be shut. In each of the two opposite events, disservice is rendered to the interest of justice, correspondent service to the interests of judicature.

The time allowed, is it too long? If yes, then by the overlength is created so much needless delay; and of evil in that shape, the consequences have been already brought to view. Is it too short? Then comes a demand for the enlargement of it; and with this demand comes down a shower of *fees*.

A *motion* requires to be made: a motion having, in a common-law court, commonly for its support, some alleged fact, or set of facts, with an affidavit or set of affidavits, by which allegation of their existence is made; and of this motion, the ground made is here, by the supposition, in point of reason, incontestible. But it follows not that, in point of fact, it will not be contested. From the motion have, at any rate, come some fees; and from the contestation, if any, will come many more fees.

Every motion made is, in fact, a suit within a suit; and of the thus needlessly interpolated suit, the expense is abundantly greater than under a system having for its ends the ends of justice, would, in the vast majority of cases, be the whole of the needful expense.

By *motion*, understand here a motion which is *not* of course. For motions are divided into *motions of course*, and *motions at large*, or say *not* of course. Of the mention thus made of the distinction, the object is, that notice may thereby be received by the Honourable House that every sum obtained for making a motion of course, is money obtained from the suitors by extortion, practised on false pretences, no motion being really made: sharers in the produce of the extortion, the attorney, the advocate, the subordinate judicial officers, and the judge.

Of this contrivance for the manufacture of motions, — mark well the absurdity, in any other character than that of the manufacture of fees. If in judicature this is right, let it now be applied to legislature, and observe the consequences. Except where the appropriate facts are deemed of themselves sufficiently notorious, no operation is ever performed by the Honourable House, no proceeding carried for which a determinate ground has not been made by special evidence. By your Honourable House, either in the whole House, or in and by its committees, according to the occasion and the purpose, evidence is convened from every part of the island, and upon occasion from every part of the globe. Now then, for argument's sake, suppose (what in reality is not possible) — suppose an honourable member to stand up and make a motion, that, on every occasion on which any person is ordered to be in attendance at the House, for the purpose of being examined, the day of attendance shall be on a day certain, and in every instance one and the same: say, for example, the fifteenth day, reckoning from that on which the motion shall have been made. A motion made to any such effect, — would it not be regarded as evidence of mental derangement, and that but too conclusive? Yet in judicature this is no more than what has all along been the practice; and till this moment without objection by all judges, professing at the same time to be directing their practice to the ends of justice.

But justification will perhaps be attempted: and if it be, imagination will be set to work for the creation of it: process, fallacy: result, in so far as successful, illusion and deception. Principal instruments of the fallacy, the words *irregularity* and *regularity*.

The mode in which they have acquired this recommendatory property seems to be this: With the word *irregularity*, sentiments of disapprobation have from the earliest time of life stood associated: at school, irregularity has betrayed itself by straying out of bounds: at a later period, by purchase of present pleasure at the expense of greater good in future contingency. Irregularity is therefore a bad thing; and, as such, attended with bad consequences. But bad consequences ought to be prevented; and to this end, whatever opera-

tion is chargeable with irregularity ought to be set aside, and to this purpose considered as not having been performed; whence the motion for "setting aside proceedings" (as the phrase is) for irregularity.

But of irregularity, regularity is the opposite: irregularity being a bad thing, regularity is in a proportionable degree a good thing, and whatsoever is good, ought to have place everywhere. Apply it accordingly to judicial procedure: whatever operation requires to be performed, a day *certain* ought to be fixed for the performance of it: and intimate is the connexion between regularity and certainty; and as fixation is the mother or daughter, no matter which, of regularity, so is she of certainty.

In proportion as the interval is too short, and thence the existence of motions for enlargement more certain, the rule receives the praise of *strictness*: for strictness is regularity, in a transcendent degree, or say in perfection. Accordingly, equity practice teems with rules of this kind — (say *time-fixation rules*) — compliance with which is notoriously and confessedly impossible.

Rule — is it a good thing? Yes, in so far as directed, and with success, to a right object: no, if directed to a wrong object: no, even if laid down without an object: for, on the field of law, all rule imports *coercion*: and, taken by itself, coercion is evil, and that evil pure. Now then, the rules in question — what are they? To outward appearance, nothing worse than rules without an object: but in inward nature and design, rules with a bad object: rules laid down for a bad purpose; for the purpose of producing by extension, under colour of justice, the object of the all-ruling passion — fees.

IX. *Device the Ninth — Mechanical substituted to Mental Judicature.*

Of the arrangement by which the parties, and in particular the first applying party, the plaintiff, was excluded from the presence of the judge, this was an immediate result, as well as an intended fruit. Already, in the blind-fixation device, may be seen part and parcel of it: a peg or a nail driven into a board, is the prototype of a day fixed.

How to cause the suit to be carried on down to the last stage without the judge's knowing anything of the matter: this was the problem to be solved, and solved it was: fruit of the contrivance, profit gained: all trouble, all time, all labour, all responsibility, saved.

By the parties in conjunction, that is to say, not the parties, but their respective agents, with the judge's subordinates, all impregnated with interests repugnant to the interests of parties, everything requisite to be done was to be done: agent fighting against agent, with arms respectively bought by them at the shop kept by the judge for the purpose.

Mechanical this mode may truly be styled, in opposition to mental: of no such faculty as those the aggregate of which is termed *mind*, any application being at any part of the time made by him: irrational and non-rational are terms that fall short of the monstrosity of it.

A cider-press, worked by steam, is the emblem of a judicatory, acting in pursuance of this device. By the press, with its moving power, the juice is squeezed out of apples: by judges, and by means of the machinery of which their predecessors were the inventors, and themselves the preservers and improvers, the money, in the shape of fees, is squeezed out of suitors. By the piston, no thought is applied either to the apples or to the sweets extracted from them. By the judge as little, to the operations performed and instruments exhibited under the authority of his name, or to the effects of them on the suitors: not so as to the *sweets*: little are they in danger of being out of mind.

An attorney, along with a fee, puts a written paper into a box, the judge knowing nothing about the matter. This done, into the same or another box, another fee is dropped, with another written paper, of which the judge has the same knowledge.

By each fee, the agent on one side purchases of the judge the faculty and benefit of plundering, impoverishing, and vexing at the same time his own client, and the suitor on the other side; whereupon, the agent of the party on the other side does the like: and thus the compliment, as the phrase is, is returned.

For elucidation follows an example: that of *signing judgment*: by this one, all others may be rendered needless. "I have signed judgment," says somebody: who, would it be supposed, is this somebody? A judge? no, but an attorney: the attorney of one of the parties. What! — is not, then, the judge the person by whom the act of signature is performed? Not he indeed: but the attorney is he by whom alone any thought is applied to the subject, any *judgment* exercised; the judge signs nothing: a clerk under the judge signs what is given him to sign as above. Under the fixation system, as above, a day has been fixed for the attorney of the party, say the defendant, to do something: say, to send in some written instrument, on pain of loss of cause. The day passed, the attorney takes to the proper officer the instrument styled *the judgment*, and so, as above, a clerk of the judge puts his signature to it.

The problem has been already mentioned. The result aimed at in the first instance is judicature without thought. In so far as this is effected, the solution is complete; in so far as this is unattainable, next comes judicature with the minimum of thought: in this case, an approximation is all that lies within the power of art and science.

Of the case in which the solution is complete, that in which a clerk's is the hand by which the judgment is signed, is an example: the judge whose name has been written by him on a piece of paper or parchment knows no more about the matter than his learned brother who is sitting at the same time upon the Calcutta bench.

At all times, of the whole number of actions commenced, a great majority would probably be found thus disposed of. For such will be the case, where the so styled defendant, being by indigence disabled from becoming so in reality, sits helpless while the suit is taking the course which the mechanism has pre-established.

As to his property, instead of going in proportionable shares among his creditors, it is in the first instance, by Judge and Co. divided, if not the whole of it, always a large part of it, among themselves.

Creditors are made to abate from their demands: Judge and Co. know not what it is to make abatement.

One little improvement remains to be made: substitution of an automaton to the judge. Written by a penman of this sort have been seen lines more beautiful than were ever written by a judge. Of the essential characteristic of English judicature, the grand instrument of delusion — the masquerade dress — this deputy would not be left destitute. Bowels, if given to him, would be but surplusage: if his principal had had any, he would not have been where he is.

Suppose now a system of procedure under which everything was done by the appearance of the parties in the presence of each other, before an unfee-fed judge. Creditors more than one — *equitable adjustment*, as the phrase is, would have place: equitable adjustment, without that injustice for which this phrase has too often been made a mask: for the reducing, on both sides taken together, the burthen to its minimum, the arrangements requisite would be made. To the debtor respite might be granted, where, to both interests taken together, the grant were deemed more beneficial than the denial of it. Respite to the debtor is, indeed, so much delay to the creditor; but delay to the one may be a less evil than ruin to the other.

Where, besides the creditor by whom the demand has been made, other creditors remained unsatisfied, all of them being called in, a *composition* would be made among them, they appearing in person, as far as needful, under the direction of the judge: the effects would be divided among those to whom the shares were due, instead of a fellowship, consisting of attorneys, counsel, bankruptcy commissioners, judiciary functionaries of various sorts, and their universal patron, by whom the seals are put to the universal system of plunderage.

X. *Device the Tenth — Mischievous Transference and Bandying of Suits.*

When justice is the object, cases of necessity excepted, in whatsoever judicatory a suit is begun, in that same is it continued and ended.

Where fees are the object, it is without any such necessity or use, transferred of course, from one judicatory to another: where, after transference, it does *not* return to the judicatory from whence it went, say *transference;* where it *does* return, say *bandying*.

Appeal is not here in question. In case of appeal, a suit is not, without special cause, sent off from one judicatory to another: in the case here in question, it is without any cause.

Instances of cases in which justice is the object, are afforded by one of the two classes of the cases in which jurisdiction is given to justices of the peace, acting singly.

Preparatory and *definitive* — by these two appellatives let them be distinguished: *preparatory*, where, from the judicatory in which it originated, a suit, to receive its termination, must be transferred to some other: *definitive*, when it is in the originating judicatory that the suit is not only begun, but continued and ended. To the class of cases in which the jurisdiction is definitive belong those in which justice is the object.

In the preservation of the practice, not in the invention and creation of it, consists, in this case, the device.

First, as to the simple transference. In the case in which the jurisdiction of a justice of the peace is of the preparatory kind, — from his judicatory, according to the place in which the suit originates, the nature of the case, and the gravity of the punishment, it is transferred to one of four others.

1. If in London and Middlesex, in the grave cases, to the Old Bailey.

2. If in the country, in these same cases, as also in the lighter ones, to the assizes.

3. In the metropolis, as above, in some cases to the assizes, in others to the general sessions of the justices of the peace.

4. In the metropolis, in the lightest cases, to the sittings before, in and after, term in the King's Bench.

In its way to each of these ultimate or penultimate judicatories, if it has arrived at its destination, it has been strained through that seat and instrument of secresy, partiality, and irresponsible despotism, the grand jury.

Evidence, time, and money: of all these valuable articles, loss, in vast and incalculable abundance, is the consequence.

In all these instances, the case is, in one degree or other, a penal one.

For a faint conception of all these losses, and of the useless and mischievous complication by which they are effected, take now

that state of things which, in respect of the evidence, is most simple, and which, at the same time, is not unfrequently exemplified.

Percipient witness to the transaction, but one: circumstantial evidence, none. Suppose the originating judicatory aptly constituted, and appeal allowed; what, in this case, should hinder the suit from being ended where it began?

A duty that might be imposed on the judge, as upon the justice of peace it is imposed, — is that of causing to be set down every syllable of the evidence. This done, why should it not be made thereupon his duty to pronounce judgment, and in case of conviction, give execution and effect to it? What (says somebody) if death were the consequence? Answer — O yes: though death were the consequence: provided always, that, in every case, appeal were allowed: appeal to a judge with jury, in cases to which the powers of a jury were deemed applicable.

Is this the course? No. From the justice of the peace it must go to a grand jury; from the grand jury, if not sunk in that dark pit, it must go to one or other of the four judicatories above mentioned.

Three times over must the tale of this percipient and narrating witness be told. Here, then, in every case, is the labour, expense, and complication of two appeals, without the benefit of one. Were appeal instituted, it would no otherwise be allowed than upon grounds deemed sufficient, and in so far as it was deemed subservient to justice, say, in one word, of *use*. On the other hand, under the existing system, there is the complication of appeal organized and established in all cases, including those in which the operation is without ground, and without use.

Were the matter of the first narrative preserved, it might serve as a check and a security for the correctness of the second: and so the first and a second for the correctness of the third. No: neither of the second nor of the first is such use, or any use, made.

Moreover, for deperition of the evidence by design or accident, — by purchase, emigration, sickness, or death, all this time, all these chances, are allowed.

I. Here then is loss the first: loss of *evidence*.

II. Now for loss of *time*: —

I. Old Bailey. In the year, sessions 8. Average duration of each session, days 10. time lost, days, from 1 to .

II. King's Bench. Terms 4: sittings, before, in, and after term, as many. Times of trial, these same sittings. Time thereby lost, days, from 1 to .

III. Assizes. In the year, days of sitting in most counties, 2: in some, but one: in each town, from 1 to 3: days lost, from 1 to 182: in some cases, no less than 364.

IV. General sessions of the justices of the peace. In the year, sittings 4. Times of trial, these same sittings, days of sitting, upon an average. : Time lost, days from 1 to .

III. Now for loss in *money*: Only for remembrance sake can this item be set down: to determination it bids defiance.

So as to the loss in the two other abovementioned shapes: from anything that could be done towards filling up the above blanks, the benefit would not pay for the burthen. According to his opportunities, every person, whose regard for human suffering suffices for the motive, will perform the operation for himself.

So much for simple transference: now for *vibration*, or say *bandying*; that is to say — after sending the suit from the originating judicatory to another, regularly bringing it back to the first. Neither was this branch of the device part and parcel of the original system. In process of time, two causes concurred in the production of the effect.

Cause the first: As opulence, and with it the possibility of finding the purchase-money for the chance for justice received increase, the local judicatories being killed, business kept flowing in to greater amount than King's Bench and Common Pleas together knew what to do with, in the compass of that portion of the year, which, under the name of *term-time*, had originally been allotted to it. Cause the second: At the same time, the burthen attached to jury service, borne as it was twice in the year by men in dozens from each county, travelling for King's Bench suits in the train of the king during his rambles, or though it were only to a fixed place, such as London, from Cumberland or Cornwall, was such as, in the aggregate, became intolerable.

Hence came the *circuit* system: that system, by which part of the time, originally under the name of *vacation*, consecrated to idleness, was given up to business, and, to a correspondent amount, *ease* exchanged for *fees*: judges being detached from the Westminster-Hall courts, to save to jurymen a more or less considerable proportion, of the time and money, necessary to be expended on journeys and demurrage.

As to the local judicatories thus extinguished, they sat every day of the 365: at least, nothing was there to hinder these days. Was anything like an adequate equivalent allowed for the 365, by the circuit-system principle, the allotment of a finite and minute quantity of time for an infinite quantity of business? When it is conducive to public health that, by medical men, wounds shall be dressed, teeth drawn, and limbs amputated at full gallop,—the circuit mode of trying causes, at like speed, will be conducive to justice.

Under the technical system, if ever, in a case such as this, evil receives alleviation, it is from some other evil. It is from the device by which mechanical operation is substituted to mental: it is from this, that the evil produced by the bandying device, by which a suit is dealt with as if it were a shuttlecock, may be seen to receive such palliative as it is susceptible of.

That the series of the proceedings of which a suit is constituted, should be divided between judicatories more than one, is a source of misdecision, for which, in some cases indeed, necessity affords even a justification, but for which nothing short of necessity can afford so much as an excuse. Why? Because in this case, the judge, on whose judgment the fate of the suit depends, has had before him no more than a part of the matter of which the ground of that judgment ought to be composed.

In the case of circuit business, this source of misdecision is purposely established and universalized. In every one of the three common-law courts, in the metropolis it is that the suit takes its commencement, and with it the history of it, called the *record*. When, on the circuit, the detachment of judges, sent from Westminster Hall in couples, make their progress through the counties, with them travel these same records, and so again on their return: whereupon, they are reconveyed to the offices, from whence they issue: of this practice of dealing with a record as with a shuttlecock, what is the use? None whatever: always excepted, the universal use: serving as a pretence for fees: a shuttlecock is lighter than a record, and would, in these cases, be an advantageous substitute to it.

Of the whole proceedings, in each suit the essential part (need it be said?) is the evidence. Well then; of each record this same evidence constituted (one might have supposed) the principal part. Well then; does it compose the principal part? No: nor so much as any part whatever: a mixture of immaterial truth and absurd lies: such is the matter of which the principal part is composed.

As to the evidence, instead of a complete written designation of everything relevant that has been said, traced by a responsible hand, the judge takes or does not take what he calls his notes; which notes are of course, in quality as well as quantity, whatever it pleased him to make them: on a motion for a new trial, but not otherwise, they are read. Now then for the *palliative*. It consists in this: setting aside occurrences, which are purely accidental, and which happily do not take place, — perhaps in one suit out of twenty, — no more than one judge is there, in truth, whose mind is, in any part of the proceedings, applied to the matter of the suit. This is the judge, under whose direction has been performed the elicitation of the evidence.

Auspices were what a Roman emperor contributed and received admiration and praise for, when a victory was gained a thousand miles off: auspices are what the judges of a Westminster-hall judicatory contribute to a suit begun and ended in their courts.

When from the circuit the record is brought back by the judge, under whose direction the evidence has been elicited, to the Westminster-hall court in the office of which the suit and the record took commencement, the form by which judgment is pronounced receives the handwriting of the chief justice, as in his sleep a plate of glass would his breath, without his knowing it; and thereupon, if the judgment be in favour of the plaintiff's side, and money is to be raised in satisfaction of a debt pronounced by the judgment to be due, is sent down ordinarily to the county, to which the record's useless journey had been made, an order called a writ of *fieri facias*, by which a functionary styled the *sheriff* of the county is required to raise the money by sale of the defendant's goods, and remit it to the office of the court in which the suit was commenced.

When it was at Westminster, and thence in the very justice chamber in which the suit took its commencement, that the elicitation of the evidence belonging to it had to be performed, here was no journey for the record to perform: next to none when in the city of London, at less than two miles distance. A trial performed at a county town in the course of a circuit was said to be performed at the assizes: a trial performed in Westminster or London, as above, was said to be performed at nisi prius: *nisi prius*, when interpreted, is *unless before:* and with that interpretation your petitioners choose to leave the matter, rather than attempt to lead the Honourable House through the labyrinth, through which, often, beginning at nonsense, the mind must make its way, ere it arrives at common sense.

But the county at which the elicitation of the evidence is to be performed — what shall that county be? Under the natural system, there would be variety, but without difficulty: without difficulty, because without decision: without decision, because by the judges, unfee-fed as they would be, nothing would be to be got by it.

Under the existing technical system, chicane is busy: difficulty proportionably abundant. Hereupon comes a sort of a thing called a *venue:* Question, shall it be changed or remain unchanged? In plain English, the county in which the trial is performed — shall it be that which, by means of the appropriate gibberish, the plaintiff's attorney had fixed upon for this purpose?

Such is the stuff, out of which, under the technical system, what is called *science* is

composed. If a suit were sent to be tried at the *venue*, and the motion were for change of *unless before*, the profundity of the science would be rendered still more profound.

One thing is throughout intelligible: At the bottom of everything are fees: at the bottom of the *unless before*, are fees: at the bottom of the changeable *venue* are fees: the greater the quantity of parchment in the shape of a record, the greater the quantity of gold in the shape of fees, the greater the patience of us his Majesty's subjects, the more cruelly will every one of us be trod upon by every dishonest man who is richer than he, and by the men to whom, under the name of judges, we are delivered over to be tormented, the more insatiably squeezed for fees.

Particular case just alluded to, that of a motion for a new trial. Judges of the three Westminster-Hall common-law courts, 12: before one alone it is that the trial has been performed. Two to one, therefore, is the chance that the above-mentioned palliative, such as it is, will not have had place: for, upon the notes taken by the one judge, at the assizes in the county, or *nisi prius* at the metropolis, is grounded the decision of the four judges in Westminster Hall, on the question whether the new trial shall or shall not have place.

Under natural procedure, supposing a new trial, it might, instead of the next quarter or half year, take place the next day; and thus before the witnesses were dispersed.

Let not mistake be made. Absolutely considered, neither on simple transference nor yet on bandying, can condemnation be passed, consistently with justice. Suppose two hundred local judicatories, having each of them in its territory a witness or a party, whose testimony was needful in one and the same suit. On such case, transference to some one, or bandying the suit to and back from each, might perhaps be productive of less delay and expense, than the fetching of them all to the originating judicatory.

The grievance consists in the performance of both operations, conjointly, and as a matter of course, where there is neither need nor use. Sending, for example, on the strength of the word *venue*, suit, parties, witnesses, and record, to Cornwall or Cumberland, when all are within a stone's throw of the seat of ultimate judicature.

XI. *Device the eleventh—Decision on grounds avowedly foreign to the Merits;* or say, Decision otherwise than on the Merits; or, more shortly, Decision not on the Merits.

Under all the devices as yet brought to view, the sinister design has shrunk from observation, and with but too much success sought something of a veil for the concealment of it. But by him, by whom, for the designation of the decision pronounced or sought by him, this phrase was employed, all veils were cast aside, and the principle acted upon, avowed and exposed to all eyes, in all its deformity and foul nakedness. To all eyes? Yes: but these eyes — whose were they? Under one or other of two descriptions they all come: eyes of the sharers in the guilt, with its profit, or eyes — which, by the devices that have been brought to view, they had succeeded in blinding, concealing from them the cause, and the authors, of the suffering they were experiencing all the while. But for this blindness, insurrection would have been universal, the yoke of lawyer-craft shaken off, all the other devices rendered useless, and universal abhorrence, not to speak of condign punishment, the only ultimate fruit reaped from so much ill-spent labour by the authors.

"To decide, sometimes according, sometimes not according to the merit — such has been my habit, such continues my determination." What a profession this for a judge! In what other class of men could any instance of such openly-avowed depravity ever have been found? — in what other part of the official establishment any such avowal of accomplished inaptitude? Look to the military: My design is sometimes to obey my commanding officer, sometimes to disobey him. Look to the financial: My design is sometimes to hand over to the treasury the money I have collected; sometimes to put it into my own pocket. Look to the medical profession: My design is sometimes to cure my patients, sometimes to kill them. In the soldier, the tax-collector, and the surgeon, if such there could be, by whom respectively such language could be held, would be seen the exact parallel of the judge, who avowedly and purposely decides otherwise than according to the merits.

In painting the deformity of this practice, can any power of exaggeration go beyond the plain exposition of the simple truth?

In what instance, on what occasion, did the Honourable House ever profess to make a decision, not in accordance with the merits? On the occasion of any dispute between child and child, between servant and servant, did ever any member of a family, non-lawyer, or even lawyer, ever declare himself thus to decide? The essential word *merits*, being a word over the import of which something of a cloud may on this occasion appear to hang, whatsoever may be necessary we humbly hope will not be regarded as misemployed, while employed in dissipating it.

To have a clear view of the sort of operation meant by a deciding *not according* to the merits, a man must first have a correspondently clear view of the sort of opera-

tion meant by a deciding *according* to the merits.

Taken in its all-embracing description, a decision *according* to the merits, is in every case a decision by which, on the occasion in question, execution and effect is given to the law: to the really declared will of the legislature in the case of statute law: to the imagined will of the imagined legislature in the case of *common law*, in that sense in which it is synonymous to judge-made law.

In the sort of case called a *civil* case, that which is done by a decision according to the merits, is, giving to the plaintiff the benefit claimed by his demand, if so it be that his individual case is contained in the species of case in which it has been declared by the law that, by every individual, whose case is included in that same species of case, a benefit of the sort so designated shall, on his demand, be put in his possession by the appropriate judge: thus giving to the plaintiff the benefit in question, if his case is within that same species of case, and thereby of necessity subjecting the defendant to the correspondent burthen: refusing the benefit to the plaintiff if his case, as above, is *not* within the species of case, and thereby keeping the defendant clear and exempt from the correspondent burthen.

In the sort of case called a *penal* case, a decision, according to the merits, is a decision by which the defendant, if guilty, is pronounced guilty: if not guilty, not guilty.

On each occasion, two questions, essentially different, how intimately soever connected, come necessarily under consideration: the question of *law* and the question of *fact*. But of this distinction, for the present purpose, nothing further will require to be said. Only that it may be seen not to have been overlooked, is this short mention made of it.

Such being the description of a decision according to the merits, now, in exact contrast to it, comes the description of a decision not according to the merits.

In its general description, as above, a decision according to the merits being a decision by which, on the occasion in question, execution and effect is given to the law: in the case of a decision not according to the merits, on the occasion in question, execution and effect is *not* given to the law.

In a civil case, a decision according to the merits was a decision, by which the plaintiff was put in possession of the benefit in question, as above: a decision not according to the merits, is accordingly a decision, by which, in that same same case, a refusal express or virtual is made, so to put him in possession, as above.

In a penal case, a decision according to the merits, was a decision, by which, if the defendant was guilty, he was pronounced guilty; if not guilty, not guilty: a decision not according to the merits, is accordingly a decision by which, if the defendant was guilty, he is pronounced not guilty; if not guilty, guilty.

Here then are four distinguishable forms of injustice: and by every decision not according to the merits, in some one or more of these forms, is injustice committed.

Moreover, in no other than in one or other of these same four forms, by a judge acting as such, can injustice be committed: into one or more of them will be found resolvable every decision to which, with propriety, injustice, or say, contrariety to justice, can be imputed.

Of the injustice committed by means of this device, the prime instrument is the word *nullification*, with the other words, nouns substantive, nouns adjective, and verbs connected with it, and the phrases in the composition of which they have place: null, void, null and void, bad, error, irregularity, flaw, vacate, avoid, avoidance, quash, set aside, annul, nullify, fatal, quirk, quibble.

Compared with this of nullification, of all other modes put together, in which injustice is capable of being committed by decisions not according to the merits, the importance would be found inconsiderable: the burthen of research and examination would not, on this occasion, be paid for by the benefit of the acquisition.

In the group, composed of these four great aggregates, are united four elementary ingredients, by universal consent acknowledged in the character of so many modifications of injustice; these are punishment *ex-post-facto*, or as some style it, *retro-active* — disappointment of established expectations, complete arbitrariness, mis-seated punishment. Of retro-active punishment, the so flagrant and incontestable injustice is an established and frequently drawn-upon source of condemnation: and this even under statute law, under which it is so rarely inflicted, even by the worst constituted and worst exercised governments.

In the case of judge-made law, this retroactivity is of the very essence of this species of law, as contradistinguished from statute law: and this even when the decision is on the merits.

But, when *not* on the merits, it stands upon ground very different from what it does when on the merits: ground widely different and much worse.

When *on the merits*, there is always some analogy between the state of the case on the occasion of the decision in question, and the state of the case on some anterior decision or decisions, to which reference is made: and those to which the analogy it bears is looked upon as being the closest, are uniformly those which are looked out for in preference. How

constantly opposite in this respect is the case where the only grounds on which the decision is formed, are such as avowedly have nothing to do with the merits!—bear no analogy whatsoever to the merits!

As to punishment, the name is on this occasion employed, because, whether or no the suffering produced is produced under the name of punishment, such upon the individual who suffers is the effect.

Now as to disappointment. Of an occurrence from which expectation of benefit in any shape experiences disappointment, pain, in some degree or other, is a constantly attached consequence: in the exclusion put upon this pain may be seen the sole but perfectly sufficient immediate reason for giving to every man whatsoever is deemed his own, instead of suffering another to get or keep possession of it. No otherwise than by statute law, and in proportion to the extent of it, can this so desirable exclusion be effected: by statute law pre-established, fore-known and fore-notified. Of judge-made law, the general incapacity of conveying this same so desirable information is the essential and distinctive characteristic. But, on every occasion, as above, even under judge-made law, it is more or less extensively an object of endeavour to confine this sort of uneasy sensation within as narrow bounds as may be; to exclude it altogether, if possible; and at any rate, on each occasion, to render the probability of its having place as small as possible. On the contrary, in the case of a decision not on the merits, the probability of the existence of evil in this shape is at its maximum: in a word, it coincides with certainty. For, unless where, in the individual case in question, corruption, or some uncommon distortion of the intellectual frame, on the part of the judge, is supposed or suspected to have place, by whom is it that the existence of any such phenomenon can naturally be apprehended, as that of a judge so lost to all sense of shame, as to stand forth a self-declared perpetrator of injustice?

Now then, by the practice of deciding on grounds palpably foreign to the merits, has power to this degree arbitrary been actually established in themselves by English judges. In general, they are expected to tread in one another's steps: and in the degree, in which this so indispensable habit is conformed to, depends altogether such feeble and even vacillating degree of security, as it is in the power of judge-made law to afford. But when at length the eyes of the public have to a certain degree opened, the evil which has been the result of their thus treading in one another's steps in some cases of quibble, has become so palpable and grossly mischievous—giving impunity, for example, to murderers, because some word has been miswritten or left unwritten by somebody,—when things have come to this pass, not only allowance but applause has been bestowed on a departure. Then it is that the judge finds himself at perfect liberty to give or to refuse impunity to the murderer, at pleasure: if he refuses it, liberality is his word: if he gives it, *stare decisis*.

Now as to the complete arbitrariness. Arbitrary to a degree of perfection, if in any case, is the power of a judge in a case in which, without danger either of punishment at the hands of the law, or so much as censure at the hands of public opinion, he can give success to plaintiff or to defendant, according as he happens to feel inclined. Such is the case where, within his reach, he sees two opposite sources of decision, from either of which he can draw at pleasure: one which will give success to the plaintiff, the other to the defendant. A sort of vase has been seen, from which, at command, wine, either of one colour or another, has been made to flow. From this emblem, the name of the *double fountain* principle has been given; to the principle on which, by this means, and in this shape, a power, which to the extent of it is so completely arbitrary, has been established.

To such a pitch of perfection has the exercise of power in this shape been carried, that of late days a judge has been seen scouting the quibble one day, giving effect to it the next. To what cause such inconsistency should be ascribed—whether to corruption, or to that wrong-headedness which, to so great an extent, judge-made law cannot fail to propagate, it is not possible to determine: to-day it is probably wrong-headedness: to-morrow it may be the other cause.

While decision on any other ground than the merits is allowed of in any case, thus the matter must continue: and for the extirpation of this enormity, nothing short of an entirely new system of procedure can suffice.

Lastly, as to *mis-seated punishment*. Delinquency, such as it is, being imputed to one person, not on him, but on some other—and that other one to whom no delinquency in any shape is imputed, is the burthen of suffering imposed. The attorney (say of the plaintiff) is supposed to have written some word wrong: for this impropriety, real or pretended, if real, intended or unintended, his client, the plaintiff, is made to lose his cause. If the case be of the number of those in which, in conjunction with the individual, the condition of the public at large is considered as suffering, as in the case of robbery and murder—of those in which the evil diffuses itself through the public at large, without infringing on any one individual more than another, as in the case of an offence affecting the revenue,—in either of these cases, it is the public that thus, for the act of the individual, is made to suffer: to the guilty individual, impunity is thus dealt

out: to the not guilty individual, or public, groundless sufferings.

In the expression by which, upon any operation or instrument, *nullification* is pronounced, employment given to a sort of fiction is involved. One operation which has been performed is spoken of as if it had not been performed: the instrument which has been brought into existence is spoken of as not having had existence: at any rate, things are put, and professed to be put, into the state in which they would have been, had no such operation, no such instrument, had place. Amidst instances of mendacity so much more flagrant, scarcely would such a one as this have been worth noticing: but for exemplification and explanation of the effects, this mention of it may be not without its use. An offender, for example, has been brought to trial, and conviction has ensued: in the instrument of accusation (say the *indictment*,) one of those *flaws*, manufactured perhaps for the purpose, has been discovered: in consequence of the observation, arrest of judgment, as the phrase is, has been pronounced. What is the consequence? Whatever *has* been done is to be considered as if it had *not* been done: information which has been elicited, is to be considered as not having been elicited: evidence, by which the fact of the delinquency has been put completely out of doubt, having been elicited, and with perfect accuracy committed to writing, is to be considered as never having had existence.

In civil cases, the effect is the same. The same convenient extinction of evidence has place, when a new trial has been granted and brought on: though in this case not being needed, no such word as *nullification*, or any of its synonyms, as above, is employed.

Peremptory and *dilatory*: by these two words are designated the two so widely different effects produced in different cases by nullification. Case in which the triumph of injustice is most complete, that in which the effect is peremptory, or say definitive: because a word has been mis-spelt by a copying clerk, a convicted murderer, for example, walks out of court, under the eyes of his deliverer and accessary after the fact —the quibble-sanctioning judge—to commit ulterior murders. Throughout the whole field of penal law, of nullification pronounced on the proceedings on grounds foreign to the merits, this, according to the general rule, and expressed in the language of Roman law by the words *non bis in idem*, is the effect. Needlessly promotive of guilt as this rule would be in any case, it would not be near so amply so as it is, were it not for the blind fixation principle, applied to days, as above. Endless is the variety of accidents — endless the variety of contrivances — by any one of which a necessary witness may be kept from being forthcoming at the day and within the hour prescribed; while on a circuit, the judges, with their et cæteras, are circumgirating, as if by steam, on a wheel without a drag.

Humanity, that humanity which has penny wisdom for its counsellor, that humanity which can see the one object under its nose, but not the hundred of the like objects at a few rods distance, applauds the impunity given in this case: consistency would, if listened to, extend the impunity to all other cases: then would society fall to pieces: and in Blackstone's phrase, everything would be as it should be.

All this supposes the case to be of the number of those called *criminal* or *penal*: for, to these words substitute the word *civil*, the eyes of humanity are closed. In every case called *civil*, a new trial may be granted: in cases called *penal*, not: in the case called *civil*, the loss a defendant stands exposed to, may amount to pounds, by tens of thousands a-year: in the case called *penal*, it may not amount to ten shillings; but cases called civil may, on revision, be found pregnant with fees to any amount: cases called penal are comparatively barren.

When the immediate effect is no more than dilatory, the evil is not so *complete*, nor in every part *certain*. But, to a more or less considerable extent, evil has place in every such case — evil by delay; and delay of justice is, so long as it lasts, denial of justice: add to this, evil by expense of the repetition: — that evil, out of which cometh forth that same relative good — Judge and Co.'s profit — the contemplation of which constituted the motive and efficient cause by which the arrangement was produced.

Add now the effect of the instruments of regularly organized delay called *terms* and *circuits*, combined with that of the *blind fixation* principle, applied to *days*. Now, in the case of a new trial, comes an interval, in some cases, of half-a-year, in others of a whole year, interposed between the original series of proceedings, and the repetitional proceedings, if granted. In this state of things, to a prodigious extent, the dilatory operation of the virtual nullification put upon the original set of proceedings becomes in effect peremptory and conclusive. A necessary witness dies, goes off of himself to the antipodes, or is bought off: of the suitors, at whose charge, in case of nullification, the quibble has been made to operate, or without need of nullification the necessary piece of evidence has been kept out of the way, the purse or the spirits have become exhausted. As often as this has place, the dilatory effect, though in name and outward appearance less pernicious than the peremptory, is in reality much more so: the expected remedy is extinguished: and to the expense and vexation attached to the pursuit of it, a fresh quantity is added.

Such is the advantage which, by the so elaborately and successfully organized system, is given to dishonesty when conjoined with opulence, that, in many instances, to the purpose of the preponderantly opulent depredator or oppressor by whom the depth of his destined victim's purse has been sounded, so far as regards ultimate success, the difference between the peremptory and the dilatory effect of nullification may be made to vanish.

XII. *Device the Twelfth — Juries subdued and subjugated.*

Not at the period here in question was this exploit hatched: juries, it seems probable, were not at that time in existence. But it was at that period that the foundation was laid, of the power by which this subjugation was accomplished: and the only use of the inquiry being how the yoke imposed on the people by Judge and Co. may be shaken off — a yoke of which this forms no inconsiderable a portion, a topic so important could not be left untouched.

The origin of the jury institution is lost in the clouds of primeval barbarism: inference must here be called in to do the work of narrative. That which inference suggests is this: Of some greater number, twelve or any other determinate number could not but have been a sort of committee. To the eyes of the historian not uniformly distinguishable was the entire body and the committee. When the one supreme criminal judicatory — the sometimes metropolitan, sometimes travelling judicatory — was instituted, then, all over the country, were extinguished the small territorial and adequately numerous local judicatories, in which the inhabitants in general took that part, which, scarcely in those rude ages, could be well defined, and if ever so well then defined, could not now be determined and stated. What was to be done? Even under the then existing thraldom, subversion, completed at one explosion, might have been too shocking to be endurable. "Come to me, wherever I am, and sit under me, as you do now under your several judges. Come to me: I do not say all of you, for in that case all production would be at a stand — but a part of the number selected from the whole; in a word, a committee; and let the number of it be twelve." When from one of these small judicatories a suit was first called up to the one high and great one, something to this effect must, it should seem, have been said. The shorter the journey, the less burthensome the duty. Whether this be more or less burthensome, the more important the occasion, the more plausible the excuse for the imposition of that same duty. Thus it was, that practice might make its way by degrees. As to the number, why twelve? Answer — Twelve was the number of the apostles: in favour of no other number could so cogent, unanswerable a reason be assigned.

Be this as it may, in the very nature of the case, never could juries have been altogether acceptable associates to judges. How should they, any more than independent Houses of Commons to Kings? Whatsoever was the disposition of the judge, partial or impartial, crooked or upright, proportioned to the share they took in the business, most frequently by intellectual inaptitude, but sometimes by intellectual aptitude, sometimes by moral aptitude, they would be troublesome. Act they could not, without being so. By their mere existence a troublesome duty was imposed upon the judge: the duty of giving something in the shape of a reason for the course prescribed by him.

Here, then, on each occasion, on the neck of the judge was a yoke, which, if it could not be shaken off, was to be rendered as light as possible. In case of non-compliance, it might by nullification, as hath been seen, be got rid of. But nullification, as hath also been seen, did but half the business. True it is, that, when applied to cases called *civil*, it could always prevent a well-grounded demand from taking effect; but it could not so constantly give effect to an ungrounded one. Applied to *penal* cases, it could at pleasure give impunity to crime; but especially in capital and other highly penal cases, scarcely of itself could it be made to subject innocence to punishment.

What remained applicable was a compound of intimidation and delusion: intimidation, applied to the will; delusion, to the understanding.

Of the intimidation employed, the one word *attaint*, will serve to bring to view a specimen. Persons, all twelve, imprisoned; moveables, all forfeited; dwellings, all laid low; habitations, lands, completely devastated; with et ceteras upon et ceteras. Maleficence must have been drunk when it came out with this Pandora's box; actual cautery applied, as often as a flea-bite was to be cured. Down to the present hour, this is law: continued such by judge-made law. In the course of a few centuries, statute law added a few trifles, that these serious things might remain unaffected. Statute law is repealable: common law unrepealable. Parliaments are allowed to correct their own errors: judges, under the name of the tyrant phantom, remain irresistible, uncontroulable, and incorrigible. No otherwise, it is true, than by compliance on the part of twice the number, could vengeance be taken for the non-compliance of the twelve. But the instances first chosen for this infliction would naturally be those in which, on the part of the sufferers, the delinquency had been least questionable. At any

rate, upon Judge and Co. would infliction in such sort depend, that, of non-compliance, *attaint* could scarcely fail to present itself as a more or less probable consequence.

Of an infliction thus atrocious, the frequency, as it presents itself in the books, is perfectly astounding to a reflecting mind. No otherwise than by attaint, could the effect produced in these days by new trial, be produced in those. As often as a new trial is granted now, conceive the Pandora's box opened there.

Note well the efficiency of the instrument. Like the fabled razors, it performs the work of itself, without need of a hand to guide it. As it is with corruption, so is it with intimidation. To produce the effect, neither discourse nor expression of will in any other shape, is necessary: for the production of the effect, relative situation is perfectly sufficient. Where the intimidation was inapplicable, afterwards when at length the stream of civilization had washed it away altogether, — remained, as the only instruments applicable, arrogance and cajolery. Of the two instruments, arrogance was, of course, to the operator, the more acceptable. The use of it presented no great difficulty. "The law, (quoth the judge) is so and so." So far the judge: but what law? No law was there in the case. Who made it? The law — meaning that portion of it to which he gave the force of law — it was he who made it; made it out of his own head, made it for his own purpose, whatsoever that purpose happened to be.

Take, for example, libel law. A libel? What is it? Answer — If I am a judge, any piece of printed paper, it would be agreeable to me to punish the man for. Is he a man I choose to punish? I make it a libel: is he a man I choose not to punish? I make it a non-libel. But is it possible that, to a man in power, it should be agreeable to leave unpunished any individual audacious enough to say anything otherwise than agreeable to a man in power? O yes; it is just possible. Witness Morning Chronicle in the days of *Perry* and Lord Chief-Justice Ellenborough.

Now suppose a *code* in existence. Juries are now emancipated. Judges in effect now: no longer dupes; no longer tools; and, by the shackles imposed on the mind, made slaves. Judges in effect now, because ennobled and qualified so to be. The law (say they) is so and so: how should it be otherwise? not be what they thus say it is? The book is opened: there the passage is — they see it. More effectually learned would be the least learned juryman in such a state of things, than, under the existing system, the most learned judge.

To the *existing* system apply (be it remembered) these remarks: not to an improved system, under which judges would be made responsible, and appeals to a superior judicatory effectual, as well as the appeal to public opinion, strengthened by extension given to publication: under such a system, greater might be the power reposed in the experienced, less in the unexperienced hands.

"Thus stands the law!" Under the existing system, when a declaration to this effect is made by a judge, from what set of men, in the situation of jurymen, can non-compliance, how necessary soever to justice, be ordinarily expected? In this case, that being assumed as true, which, in every common law case, is so opposite to true — that is to say, the existence of the law in question — to the judge must this same law be known, if to anybody; as to these his unlearned pupils, to them it is completely unknown: so the inward consciousness of each man of them testifies. With the law, which thus, at the very moment of its being made, is revealed to them, begins and ends their knowledge. In such a state of things, so effectually, by the consciousness of their own ignorance, were they and are they blinded, their appointed guides may, to any degree, be blind, without being seen by them to be so. Under these circumstances, what but blind compliance could then be — aye, or can now be — the general practice? What exceptions there are, are such as are formed by here and there a rare occurrence, operating upon a rarely exemplified set of dispositions.

Of the acquitted decapitator, mention has been made above. If, by a union of past absurdity and present arrogance, a jury can be brought to this, to what is it they cannot be brought? But, in that case, how much is to be ascribed to judge's influence, how much to jurymen's abhorrence of death in the character of a punishment, cannot be affirmed with certainty: and so long as the punishment is death, impunity will, every day, be approaching nearer and nearer to the being every day's practice.

XIII. *Device the Thirteenth — Jurisdiction, where it should be entire, split and spliced.*

Jurisdiction has two fields — the *local* and the *logical*: the *local*, or say *territorial*, divided into *tracts* of *territory*; the logical, divided into *sorts of cases*. In the local field, that which the interests of justice require is, as hath been seen, *multiplicity*; in the logical field, as will be seen, *unity*. So much for reason: now for practice. Where, by the interests of justice, multiplicity was required, the interest of Judge and Co. established, as has been seen, the *unity*: where, by the interests of justice, unity was and is required, the opposite interest of judicature, that is to say, that same sinister interest will now be seen establishing *multiplicity*.

From the expression *jurisdiction split*, let it not be conceived, as if at the initial point

of time in question, the field of legislation was, in its whole extent, covered as it were by one large block; and that, at different times thereafter, by the introduction of wedges or otherwise, the block was broken into the existing splinters, connected together, as they may be seen to be, by the conjunct sinister interest. The case is, that it is by degrees, as will be seen, that the aggregate composed of the splinters has been brought into its present so commodious state: namely, in some instances by fissure, in other instances by the gradual addition of portions of new matter *spliced* to the older. *Splitting* and *splicing*— by the union of these two operations has the actual aggregate result been brought into existence.

Matter of the aggregate this: Of the substantive branch of law different masses, three or four: and, for giving execution and effect to them, more than twice as many of the matter of the adjective, or say procedure branch of law; constituted every one of them, chiefly of the fictitious, or say judge-made sort; with only here and there a patch of real law — of legislature-made law — stuck in.

In the *keeping* of these portions of matter in the hands of different sets of judges, not in the *originally placing* them in these or any other separate hands, consists, at present, the sinister practice — the *device:* in the union of them, in each territory, in one and the same hand, the sole remedy.

As to the *splitting*, in some instances, the operation by which it was effected was performed at one stroke; that is to say, by one statute: call the mode, in this case, the *all-at-once* or *declared* mode; in other instances, silently, gradually, and imperceptibly: call it, in this case, the *undeclared* or *gradual* mode.

So likewise, as to the *splicing*.

Short description of the modes of operation in the two processes this:—

Original stock or block, the grand judicial authority, instituted by William the Conqueror, and styled the *aula regis:* Anglicé, the *king's hall* or *court*.

1. Splinter the first, court *Christian*, alias *Spiritual*, alias *Ecclesiastical:* species of operation, difficult to say whether the splitting or the splicing. Mode of operation, at any rate, the *gradual*. By the terror of punishment in the future life, it acquired, as will be seen, powers of legislation and judicature in the present.

2. Splinter the second, courts of *Exchequer*, stock or block, as above, the *Aula Regis* jurisdiction. Out of the *administrative* authority, now called *the receipt of the Exchequer*, instituted for the collection of the revenue, grew the *judicative*, called the court of Exchequer. Where contestation has place, if and in so far as professional assistants are called in, *administration* becomes *judicature*. Mode of operation, gradual; members of the court, a portion of those of the *aula regis*.

3. Splinter the third, Chancellor's jurisdiction. Stock or block, the Aula Regis jurisdiction. This functionary, decidedly a member of the Aula Regis, officiated therein as secretary of state: and, at the same time, his being the office from which issued the instruments, still styled *original writs*—instruments, by which commencement was given to so many sorts of suits, exercised thereby, in subordination to the legislative authority of the monarch, a sort of unperceived, but not the less real authority of the same kind. Species of operation, the splitting: mode, the gradual.

4. Splinter the fourth, jurisdiction of the court of Common Pleas. Stock or block, the jurisdiction of the Grand Justiciary. Species of operation, the *splitting*. Mode, the *all-at-once* mode. Splitting instrument, *magna charta:* remnant of the original stock or block, the court of King's Bench. Business now styled *civil*, allotted to the Common Pleas; business now styled *criminal* or *penal*, reserved to the King's Bench: also, either reserved by original institution, or acquired by encroachment, the appellate's superiority over the Common Pleas.

5. Splinter the fifth, equity jurisdiction of the Chancellor's court. Stock or block, the aggregate of this same functionary's authority. Species of operation, splicing: mode silent, unperceived, gradual. Remnants, the common-law business, now styled the *petty-bag* jurisdiction: petty in name, petty in bulk and nature.

6. Splinter the sixth, equity jurisdiction of the court of Exchequer. Stock or block, the common-law business of that same court. Species of operation, splicing. Mode unperceived, gradual: performed in imitation of the Chancellor's equity jurisdiction.

7. Splinter the seventh, Bankrupt Petition court. Stock or block, the Chancery jurisdiction. Species of operation, splicing. Mode, the all-at-once mode. Splicing instrument, the statute 34 and 35 Henry VIII. ch. 4.

8. Splinter the eighth, Insolvency court. Stock or block, again the Chancery jurisdiction. Species of operation, splicing. Mode, the all-at-once mode. Splicing instrument, 53 Geo. III. ch. 102: Subsequently applied instruments, 54 Geo. III. ch. 28, and 3 Geo. IV. ch. 123.

9. Splinter the ninth, jurisdiction of the justices of the peace acting collectively in general sessions. Stock or block, the King's Bench jurisdiction. Species of operation, splicing: mode, the *all-at-once* mode: splicing instrument, statute 1st Edw. III. st. 2. ch. 16.

10. Splinter the tenth, jurisdiction of jus-

tices of the peace acting collectively in not fewer than two at a time in petty sessions. Stock or block — original, the King's Bench jurisdiction, as above: immediate, the abovementioned general-sessions jurisdiction. Species of operation, splicing. Splicing instruments, various consecutive statutes. On the part of each, mode of operation, the all-at-once mode: on the part of the aggregate, the most thoughtful, silent, or unperceived and gradual.

11. Splinter the eleventh, jurisdiction of justices of the peace acting severally throughout the suit. Stock or block — original, the King's Bench jurisdiction: immediate, the general-sessions jurisdiction, as above. Species of operation, mode of operation, and instrument, as above.

12. Splinter the twelfth, jurisdiction allotted to justices of the peace acting severally, and exercising, at the outset of a suit, a fragment of jurisdiction: the suit being, for its completion, transferred to some one of four other judicatories: as to which, see above, Device XI. *Needless transference and bandying.* Stock or block — the King's Bench jurisdiction. Species of operation, splicing. Mode, the all-at-once mode. Splicing instrument, statute 1 & 2 Phil. and Mary, ch. 13.

13. Splinter the thirteenth, jurisdiction of small-debt courts. Original stock or block, the *Court of Requests* in Westminster Hall, long since abolished. Species of operation, splicing. Mode, in the instance of each, the all-at-once mode. Splicing instruments, a multitude of statutes, each confining its operations to some narrow portion of territory.

Note, that in almost every one of these cases, the course taken for the ascertainment of the truth, in relation to the matter of fact, is different: as to this presently.

Ecclesiastical judicatories for maintenance of discipline among ecclesiastical functionaries: — military judicatories for maintenance of discipline among land-service military functionaries: — the like in relation to sea-service military functionaries. Admiralty prize-courts: on the subject of these judicatories, the demand for explanation not being cogent, and room being deficient, the sole purpose of the mention here made of them is the apprehension lest otherwise they should be supposed to have been overlooked.

Mark here the chaos! Different branches, or say masses, of substantive law, spun out in this dark way by judge-made law, thus lamentably numerous! and for giving execution and effect to them, to each a different mass of procedure, or say adjective law: masses framed in so many different modes, and upon different principles!

Single-justice courts, petty-sessions courts, and small-debt courts, the more entitled to remark, as affording, perhaps, the only instances in which judicial procedure has had for its main ends the ends of justice.

Essentially repugnant to the ends of justice (need it be said?)—essentially repugnant, if anything can be — this system of disunion: proportionally subservient to the actual ends of judicature: hence the arrangement so recently employed in keeping it up: in particular, as between equity courts and common-law courts.

Conducive to the ends of justice will this splitting and splicing work be said to be? Well then: here follow a few improvements, on the same principle. To the *bankruptcy* court, add a *stock-breaking* court: to the *insolvency* court, a *non-solvency* court, a *non-payment* court, a *non-liquidation* court, and a *non-discharge* court: each, with a different mode of procedure. Taking for the twelfth-cake the jurisdiction of the *Aula Regis*, let lots be drawn by all these courts, for these their respective styles and titles. Allot to each of these courts one commissioner to begin with; then three commissioners (the number in the *insolvency* court in its improved state,) then the square of three, 9; then the cube of three, 27: then the fourth power of three, 81; by which last, the number of the commissioners of *bankrupts*, or *bankruptcy*, will be surpassed by eight, and proportionally improved upon. To secure what is called *qualification*, meaning thereby *appropriate aptitude*, impose as a task and test the having partaken of a certain number of *dinners*, in some one of four great halls. Of situations of different sorts, in, under, or about these courts, number capable of being occupied by the same person at the same time, ten: by which the number occupied by a son of the ex-chancellor, the Earl of Eldon, will be outstript by *one*. To complete the improvement, conclude with pensions of retreat, after ten years' service, and pensions for widows, orphans, and upon occasion, sisters.

At the end of a certain length of time, the existing incumbents will be found, each of them, at the same time insufficiently and more than sufficiently apt, as was the case with the metropolitan police magistrates: then will be the time for adding one-third to their salaries: with or without the like addition to the other just mentioned so equitable and comfortable appendage.

We proceed now to present to the view of the Honourable House the evils, of which this system of disunion is, and so long as it continues in existence cannot but be, so abundantly productive: we shall point out the cause by which it has been produced: namely, the mixture composed of primeval inexperience and sinister interest.

In particular, in regard to imprisonment for debt, on its present footing, to wit, at the commencement of the suit—a period at which

it is so frequently groundless, and so constantly ungrounded, it will be seen that it had no better origin and efficient cause, than sinister interest, in its foulest shape: special original cause, as will be seen, of this abuse, the splitting of the Common Pleas jurisdiction from that of the King's Bench; thereafter immediate cause, the grand battle between the two courts, in the reign of Charles the Second.

The use of confusion has already been brought to view: behold now one pre-eminently useful mode or efficient cause of it. In the practice of a large proportion of all these courts, both branches of law spun out together, the substantive branch out of the adjective, in the shape of *twist*, by the judge in the course of the operations of procedure, the twist afterwards woven into piece-goods by the firm of report-maker, report-maker's bookseller, abridgment-maker, and his abridgment's bookseller: and in this way it is, that, on pretence of judicature, over the whole field of law, power of legislation continues to be exercised: exercised by the combination of such essentially and flagrantly incompetent hands!

Are you a chief justice? Have you a law to make? to make on your old established mode? The following is your *recipe*. Take any word or number of words the occasion requires: choosing, as far as they go, such as are already in the language: but if more are wanted, you either take them from another language, old French or Latin, or make them out of your own head. To these words you attach what sense you please. To enable you to do, by this means, whatever you please, one thing only is now wanting. This is, that, in the accustomed form, by some person other than yourself (for you cannot yourself, as in some countries, give *commencement* to a suit,) the persons and things to be operated upon must be brought before you by the king's attorney-general, or an individual in the character of plaintiff. This done, you go to work, according to the nature of the case. Is it a civil one? To the plaintiff you give or refuse as much of defendant's property as is brought before you. Is it a criminal, or say penal one? You apply, or refuse to apply, to the defendant, the whole, or more, or less, of the punishment demanded for him at your hands. This you do in the first instance before and without any law to authorize you: for no such authorizing law have you any need of: after which, in the way just mentioned, what you have done receives, in print, authority, extension, and permanence, from the above-mentioned hands, being by them manufactured into a sort of fictitious law doing the office of, and upon occasion overruling, an act of parliament.

From the process pursued in the principal of these manufactories, a conception, it is hoped, tolerably clear and correct, may be formed, of the manner in which this species of manufacture has been, and continues to be, carried on. These are — 1. Equity courts; 2. Common-law courts; 3. Courts christian, *alias* spiritual, *alias* ecclesiastical courts.

I. Turn first to the self-styled *equity courts*. Words comprising the raw materials, *trust*, *fraud*, *accident*, *injunction*, *account*, with the word equity at their head — here we have the whole stock of them, or thereabouts: stock in *words* small: but in *matter* as abundant as heart can desire. One of them, the master-word *equity* — so rich is it, that out of it, and by the strength of it, anything could yet, and to this day can be done, that lust of power or money can covet. What can it not do? It can take any ward, every infant, out of the arms of any and every father, and at the father's expense, keep cramming it with the pap of imposture and corruption, till the father is reduced to beggery, and the entire mass of the child's, rendered as foul as that of the crammer's mind.

Equity? what means it? A bettermost, yes, and *that* the very best, sort of justice. But, justice being, the whole together, so good a thing, what must not this very best sort be? Be it what it may, that which, on each occasion, is done by the judge of an equity court, is it not equity? Well then, by the charm attached to this fascinating word, to whatsoever he does, not only compliance and acquiescence, but admiration and laud, in the accustomed and requisite quantity, are secured.

II. Next as to the *common*-law courts; and in particular the great criminal-law court — the *King's Bench*.

Conspiracy, *blasphemy*, *libel*, *malice*, *breach of peace*, *bonos mores*, with their et cæteras — of these raw materials is composed the stock of the common-law manufactory. That which equity does for chancellor, that or thereabouts, the single word, *conspiracy*, would of itself be sufficient to do for chief-justice of King's Bench. With this word in his mouth, what is it a chief-justice cannot do? who is there he cannot punish? what is there he cannot punish for?

Persons *conspire*, things *conspire* — to produce effects of all kinds, good as well as *bad*. In the very import of the word conspiracy is therefore included the conspiracy to do a bad thing: now then, so as proof has been but given of a conspiracy, that is to say, of the agreeing to do a something, or the talking about the agreeing to do it, the badness of this same something, and the quality and quantity of the badness, follow of course; they follow from the *vis termini*, the very meaning of the word, and may therefore without special proof be assumed.

So far, so good, where you have two or more to punish. But how if there be but one? In this case, a companion must be found for him. But this companion it is not necessary he should have a name: he may *be a person unknown:* for, because one of two criminals is unknown, is it right that the other should escape from justice?

So much for the King's Bench manufactory taken singly. Now for ditto and Common Pleas *united*, cases and suits called *civil: verbal stock* here — *case*, *trover*, *assumpsit*, with their et cæteras.

Conspiracy, blasphemy, peace, and malice — these words were found already in the language, and, whatsoever was the occasion or the purpose, required only a little twisting and wresting to make them fit it. *Bonos mores*, *trover*, and *assumpsit*, had to be imported; *bonos mores* and *assumpsit* from Italy; *trover* from France: all of them had to undergo, in the machinery, more or less of improvement, ere they were fit for use. *Face* would have been as intelligible as *case*, and served as well, had fortune been pleased to present it; *clover*, as *trover*: *mumpsit* as *assumpsit:* but *case*, *trover*, and *assumpsit*, had fortune on their side.

III. Now as to *Court Christian*. No *fissure*, violent or gradual, requisite here. Nothing requisite to be done otherwise than in the quiet way, by *splicing:* by splicing performed imperceptibly, and in the dark; in the pitchy darkness of the very earliest ages: no need of custom, of snatching, in the manner that will be seen presently, from any other branch of the Judge and Co. firm: simple addition was the only change needed.

Mode of proceeding, or say *recipe*, this: — Take any act of any person at pleasure; call it a *sin:* add to it a punishment; call the punishment a *penance*. Observe, that the agent has a *soul:* say, that the soul wants to have good done to it: say that the penance will do this good to it. If, frightened at the word *sin*, the people endure to be thus dealt with, anybody is employed to accuse anybody of any one of these sins: if then he fails to make answer in proper form, you make him do this *penance:* so, of course, in case of conviction.

Now as to *fees*. Fees you receive for calling for the answer: fees for allowing it to be made: fees for making it; and so on successively for every link in the chain. But, suppose no such answer made? Oh, then comes *excommunication:* an operation, by which, whether he does or does not think that he will be made miserable in the *other* world, he will at any rate be made sufficiently so in *this*.

A circumstance particularly convenient in this case, was and is, that, besides the fees received in the course of the prosecution, the penance and the excommunication themselves have been made liquifiable into fees.

Sin, in this case, it was necessary should be the word: not *crime* or *civil injury*. But the same obnoxious act might, and may still, be made to receive all these different appellations; and, on account of it, the agent dealt with in so many different ways; made, to wit, after the truth of it has, by the three different authorities, in and by their several different and mutually inconsistent processes, been ascertained.

The act suppose a blow, and the sufferer, a clergyman. Common Pleas gives to this same sufferer money for remedy to the civil injury: King's Bench takes money from the man of violence, for the king: Court Christian takes money from the same for the good of his soul, distributing the bonus among the reverend divine's spiritually learned brethren.

True it is, that, upon proper application made, — one of these same judicatories (the King's Bench to wit,) may stop proceedings in one of the others — the Court Christian to wit. But defendant — what gets he by this? One certain suit, for the chance of ridding himself of another. And note, that in this fourth suit, the mode of establishing the fact which is the ground of the application is different from every one of the modes respectively pursued in the other three.

Such is the species of manufacture: spinning out of words, the sort of piece-goods called *law*, and *that* of the goodness that cloth would be of, if spun out of cobwebs. Now then, even from early time — time so early as the year 1285 — time not posterior by more than two centuries to the original period all along in question — what need or pretence has there been for it? Not any. So early as the year 1285, parliament gave birth to an idea, by which, had it been pursued, appropriately-made law might in no small proportion have been made in such sort as to occupy the place usurped by the spurious sort thus spun out blindfold, in the *ex-post-facto* way, in the course of judicature. At the tail of a paragraph, having for its subject-matter an odd corner of the field of law, the scribe of that day, as if by a sudden inspiration, soars aloft, and as if from an air-balloon, casting his eyes over the entire field, goes on and says, "And whensoever from henceforth it shall fortune in the chancery, that in one case a writ is found, and a like case, falling under the law, and requiring like remedy, is found, the clerks of the chancery shall agree in making the writ:" after which, for appropriate confirmation, follows reference duly made to the superordinate authority, the next parliament.

Behold here provision made for codification. Here was seed sown, but the soil not yet in a state to admit of the growth of it. In

the barbarous mode of *ex-post-facto* judge-made law, were therefore of necessity fumbled out such indispensable arrangements, without which society could not have been kept together.

For ages, by common law alone, equity not being grown up to sufficient maturity, were these arrangements made. But, after all that had been thus done, and amidst all that was afterwards doing by common law, abundant and urgent remained the need of such arrangements, in addition to those the topics legislated upon, in this same blind and spurious mode, by chancellors, with the word *equity* in their mouths, may serve to show.

1. *Trust*, 2. *fraud*, 3. *accident*; these three have been already mentioned. Add to them —4. *injunction* (meaning *prohibition*,) as to use made of property in immoveables; 5. *injunction* as to pursuit of remedy at common law; 6. *account*; expressions all these so handy and commodious, because single-worded. Add to them moreover, 7. obligations to deliver *in kind*, *things* due; 8. obligation to perform *in kind*, *services* due: these, with the exception of *injunction*, as applied to common-law *suits*, belonging to substantive law. Add to all, the following, which belong to adjective law, or say judicial procedure: 9. elicitation of evidence, from the parties on both sides, — oral from their testimony, real and written from their possession; 10. at the time allotted to elicitation of orally elicited evidence, the quantum rendered always adequate to the demand; 14. elicitation and recordation made, for eventual use, without actual suit.

All these objects had and still has common law, as we shall show, left in a manner to shift for themselves: left either without any provision at all made for them, or without any other than such by which the purpose cannot, in any tolerably adequate degree, be answered.

Think now, of the enormity of the deficiency left, and inaptitude exhibited, by the assemblage of all these gaps: —

1. First, as to *trust*. Think of a system of law, under which, in relation to this head, nothing, or next to nothing, was done. Over the whole field of law, particularly over the *civil*, extends the demand for the matter which belongs to the head of *trust*. Power exercisable for the benefit of the possessor, it is called *power*: power, in so far as not exercisable but for the benefit of some *other* person or persons, is called *trust*. In particular, in the hands of all public functionaries, considered as such, what power soever has place, is so much trust.

2. Secondly, as to *fraud*. Over the whole expanse of the field of law, more particularly the penal branch, extends the need of provision in relation to *fraud*: in whatever shape *maleficence* operates, *fraud* shares with *violence* the privilege of officiating as its instrument.

3. Thirdly, as to *accident*. Of the import of this term, the vagueness immediately strikes the eye. But, for bringing to view some conception of the application on this occasion made of it, — the two words — *conveyance* and *obligatory-engagement*, may here serve. Of the provisions requisite to be made under this head, the principal beneficial purpose is the *prevention of disappointment*: the grand and all-comprehensive purpose, by which the purport of the portion of law occupied in the giving security for property, requires to be determined.

4. Fourthly, as to *injunction*, applied to the purpose of restraining mischief to immoveable property; *injunction*, meaning interdiction, or say inhibition or prohibition: for, in ordinary language, we speak of *enjoining* a man to *do* a thing, as well as to *forbear* doing it. As to the operation performed under this name by a court of equity, it has for its correspondent and opposite operation that which, under the name of a *mandamus*, is performed in the courts of common law. In the case of the *mandamus*, the act commanded is a *positive* act; in the case of the *injunction*, commonly a *negative* act.

Note here, by the bye, that to the provision made by both these remedies together, belongs the property of inadequateness. For, to the evil, whatsoever may have been the amount of it, which, antecedently to the attempt made by them respectively to stop it, has already taken place — no remedy do they attempt or so much as profess, to make application of: no compensative remedy, no satisfaction in any other shape, no punitive: and at the charge of an honest, what is the profit which a dishonest man will not be ready to make, if assured that the worst that can happen to him for it, is the being stopt from making more? To himself no punishment; to the party wronged no satisfaction? But, as to any such ideas as those of all-comprehensiveness and *adequacy*, nearer would they be to a bed of Colchester oysters, than they are to a bench of English judges! — a bench — whatsoever be the number of seats on it, whether one, four, or twelve.

5. Fifthly, *Injunction*, as applied to the pursuit of remedy at common law. Now for a riddle. To itself by itself this operation would not naturally be expected to be seen applied: it would be to the same operation performed by equity, what *suicide* is to the species generally understood by the name of *homicide*. As little would it, under the same judicial establishment, have been applied to the operations of any judicatory, by another calling itself a *court of Equity*, if, to common sense, in union with common honesty, it were possible to obtain admission into such a

theatre. Setting up one judicatory, to put a stop, at the command of any man that will pay for it, to the operations of another, and frustrate what in profession were its designs, and this, without so much as a supposition of error on the part of the judicatory so dealt with, — in an arrangement such as this, may be seen a flower of ingenuity that assuredly would in vain be looked for in any other field than that of English judicature. But, though no common-law court, as such, nor therefore any common-law court which is merely a common-law court, has as yet, it is believed, been in the practice of thus dealing by itself, yet an English judicatory there is, which, being, like the marine corps, of an amphibious, and moreover of an ambodextrous nature, has been, and as often as called upon continues to be, in the practice of robbing the chancery shop of this part of its custom, by employing one of its hands in tying up the other, and one portion of its own thinking part, such as it is, in frustrating what had in profession been the designs of the other. This riddle is the *court of Exchequer*. For a parallel, suppose this: — Enactment that no public building shall ever be erected — no church, no palace, no prison, no posthouse — without employment successively given to two architects, the first to erect a building in one style — say the Gothic — the second to pull it down, and erect upon the site of it another in a different style — say the Grecian. Taken in both its parts, matched thus in absurdity would the equity injunction system be: exceeded it would not be: were the mental cause of the evil mere folly without knavery, Gotham itself would find itself here out-Gothamised.

6. Sixthly, as to *account*. Think of a judiciary establishment, with three superior courts in it, professing, each of them, to settle mutual accounts to any amount, and on that ground receiving fees before anything is done, and at the hands of all applicants: these professed auditors two out of the three all the while unprovided with the machinery, without which that which they undertake to do cannot be done.

The case is — the process of account is — not, as in other cases, a simple and transitory, but a compound and a continuous process, the subject-matter being an aggregate, composed of two sets of demands; made one on each side, each of them, in case of contestation, capable of affording the matter of a separate suit. The process, continuous as it is, the Common Pleas the only one of the three courts which, in a case between subject and subject, took cognizance of it by right, gave itself no means of performing, otherwise than within the relatively short and determinate space of time, into which the business, if performed at all, could be injected and condensed, like the business of a *play*, under the dominion of the unities. This business the only judicatory capable of going through in all cases, is the Equity court. This has, it is true, machinery enough, and takes time enough. But, the machinery of it having for its object and effect the multiplication of fees, and thence the prolongation of time, the only sure result is the division of a large proportion, if not the whole, of the property of the accountant parties, among the tribe of auditors: and it is like a prize in a lottery, if any portion of the net balance finds its way into the pocket of him to whom it is due.

7. Seventhly, *as to delivery of things to the right owner:* the case of *restitution* included. Think of a system of law, by which no one moveable thing whatsoever *was*, or to this day *is*, so much as undertaken to be secured to the rightful owner! No: not so much as *undertaken*. For if a man, not even imagining himself to have right on his side, has possessed himself (as, without exposing himself to punishment, he may do) of whatever moveable thing of yours you most value — (a horse, a picture, an unpublished manuscript, for example) — what remedy have you? An *action*. Behold now how much better off, in this case, your dishonest adversary, the wrong-doer, is, than you, the party wronged! Only in case of its not being worth so much as it is valued at, does he give you back what he has thus robbed you of.

And by this action, what, even in case of success, is the utmost you can get? Not (unless the man who has thus injured you so pleases) the thing itself, but, instead of it, what is called the value of it: this value being what has been set upon it at full gallop, by twelve men brought together by chance: twelve men, not one of whom, unless by accident, understands anything about the matter. The estimate having been thus made, this same wrong-doer it is, who, after the days or months he has had for consideration, takes his choice, and determines whether to let you have your property back again, or to convert it to his own use. And this money, when the jury have awarded it to you, will you have it clear? Not you, indeed: not this money will you have, but the difference between this and what you will have to pay your attorney, after he has *received* what, in the name of *costs*, has been awarded to you at the expense of the wrong-doer. And the amount of that same *money received*—what will it be? Something or nothing, or less than nothing, as it may happen: provided always that the said wrong-doer has the money, and *that* money capable of being reached by the so precariously effective process of the law: estates in land, money in the funds, shares in joint-stock companies, with property in an indeterminate number of other shapes, being of the number of things not thus reachable.

8. Eighthly, as to *fulfilment of obligatory engagements*. Think of a system of law, which gives not effect to any one sort of engagement, which men, living in society, have need to enter into, unless the intended violator of the engagement pleases.

In this case, behold the same favour to the wrong-doer as in the just-mentioned case: instead of fulfilment, money received from the dishonest man, if he has it, and choose to give it; unless he choose to give it, none. Agree, for example, for the purchase of an estate. Common law does not so much as profess to give it you. Natural procedure would give it you in a few days. Equity will give it you or not give it you, but when? At the end of several times the number of years.

The case is, that, bating the obtainment of a lot of land in entirety, or a portion of it by partition among co-proprietors, or a portion by a writ called an *elegit*, in lieu of a debt, — a process too complicated and rarely exemplified to be worth describing here, — such is the lameness of the law, that, for administering to a party wronged, satisfaction for the wrong, the only species of remedy which the common-law partners in the firm of Judge and Co. are (saving the narrow exception afforded by the case of a *mandamus*) to this hour provided with, is *that* which consists in money: money of the defendant's, if, after paying charges, by good fortune any such money is left, and can moreover be come at: for which purpose, the sheriff of the county, that is to say, under his name, and by his appointment, a nobody-knows-who seizes and causes to be sold whatever is come-at-able and saleable: the remedial system being in such a state, that a man may have to the amount of any number of millions in the shape of government annuities, and each one of a variety of other shapes, without the sheriff's being able, were he ever so well disposed, to come at a penny of it: one consequence of which is, that a dishonest man, with other men's money in his hands, may consume it in luxuries, or do anything else with it he pleases, if he had rather continue in a comfortable apartment in a prison, than part with it.

So much as to substantive law: now as to adjective law, and therein as to evidence.

9. Ninthly, *as to elicitation of evidence from the testimony and the possession of parties.* Think of a set of judges, with whom it was and still is a principle, to keep justice inexorably destitute of evidence from this its most natural, most instructive, and oftentimes sole and thence indispensably needful, source!

A defendant (suppose) is in court. Is this, or is it not, your handwriting? My lord chief-justice — will he put any such question to him? Not he, indeed. Will he suffer it to be put to him? As little. Good reason why. Infinite is the crop of fees that would be nipt in the bud by any such impertinences: and if a question of this sort were to be allowed to be put, what reason could be given for refusing to give allowance to any other?

Considering how unpleasant it would be to a dishonest man, with an honest man's money in his hands, to part with it; still more so to a malefactor to do anything that could contribute to his punishment — considering all this, and in all sincerity sympathizing with these their partners and best friends — conscience, in these tender hearts, revolts at the idea of any such cruelty. Thus it is with the common-law branch of the firm.

Somewhat less sensitive are the nerves of the *equity* branch. Evidence it *has* brought itself to draw from this so surely reluctant source. But it is on one condition: and that is — that years be employed in doing that which might be so much better done in a few minutes, and pounds by hundreds or thousands in doing that which might be so much better done at no expense.

10. Tenthly, *as to the time allotted to the elicitation of really elicited evidence; and the adjustment of the quantity of it to the demand.* Very little to the taste of the common-law branch is any apt adjustment of this sort. In what manner it reconciles opposite mischiefs — *delay* and *precipitation* — turning them both to account, has been shown under these same heads. General rule — the less the quantity of such evidence, and the less the time consumed in the elicitation of it, the better: for nothing is there to be got by it. As to elicitation in the *epistolary* mode, nothing, even at this time of day, does common law know of any such thing. For this employment of the pen, neither at the primeval period in question, nor for many centuries thereafter, were hands sufficient to be found. That sort for which alone there was, in all that time, *clerk power* in sufficiency, was that which, being essentially false, was distinguished, as above mentioned, by the name of *pleadings* — written pleadings: and by which, as much money thus employable as the pecuniary means of the country could furnish, was to be got. So much for common law. For equity it was that fortune reserved this the richest mine in the field of procedure. Observing how much was to be got by penmanship, it sets its inventive genius to work, and having invented this new mode of elicitation, stept in, proffered its services, and got to itself this new branch of the evidence-eliciting business: terms and conditions as usual; time, by years: pounds, by hundreds or thousands, as above.

Under the head of the *mendacity device* reference is made to the present one, for a hot-bed, and mode of culture, in and by which this fruit, so delicious to learned palates, is forced. Now for a sketch of it. Frequently, not to say generally, a part more or less con-

siderable, of the evidence necessary to substantiate the plaintiff's case, has for its source the recollection of the defendant. Of course, not always without more or less of hurt to his feelings can this sort of information be furnished by this same defendant. In tender consideration thereof, common-law judges, as above, refuse so much as to call upon him, or even to suffer him, to furnish it. The keeper of the great seal and of the king's conscience is not quite so difficult. He has his terms, however, to make with the plaintiff, and they are these: "Whatever the defendant knows that will help your case, you will, of course," says his lordship to the plaintiff, "be for asking him for, and putting questions to him accordingly. Good: and the answers he shall *give*. But, it is upon this condition. Before you ask him how the matter stands, you must yourself begin and tell him how it stands: otherwise, no answers shall you have. This is what you must do, as to every fact you stand in need of. Now then, to do this, you must, of course, for each such fact, have a story framed, such as will suit your purpose: but *that* it is your counsel's business to do for you: he, and he alone knows what is proper for the occasion. What it consists of, is a parcel of lies, to be sure. But that's his concern, not your's: you have not to swear to them. I and mine get money by all this: so there is no harm in it: and, as you do not swear to it, you can't be punished for it.

"As to another world, *that* to be sure there is, and with a God's court in it. But there, it is your counsel that will have to answer for it, not you: you can't help it: no, nor he neither, without losing his fees. I, for my part, have some thousands of these lies upon my back, or I should not be where I am: look at me: what am I the worse for it?"

11. Eleventhly, as to *elicitation and recordation, made, for eventual use, without suit.* Be the occasion what it may, be the source what it may, evidence obtainable to-day may cease to be obtainable to-morrow. Here then may be seen a deficiency: but, as to the want of supply for it, at the early age in question, no wonder it should have had place. In the field of justice, much insight into future contingency was not to be expected from men who, to so vast an extent, were blind to what was, in this same field, passing under their own noses.

For this deficiency, *equity* had no objection to afford a supply: but of course upon her own terms, — those terms, which have so often been brought to view. Those terms required *a suit* on purpose: for, a suit was necessary to *equity*, how little soever necessary to *justice*.

As to recordation, — at the early period above mentioned, clerk-power enough there was for the *pleadings* — the mixture of *lies* and absurdities above described; none was there for the evidence, the only sort of matter which presented a chance of being chiefly composed of relevant and material *truths*. Accordingly, in the mass of matter called the *record*, no sort of matter can there be so sure of not being found, as that which stands distinguished by the name of evidence.

Not but that, to prove its own existence, the entire hodgepodge may, on a particular occasion (fees being first received,) be admitted under the name of evidence: to prove, for example, that a man was convicted of murder: but by what it was that the murder was produced — whether, for example, by an endeavour to kill the man, or by an endeavour to kill a fowl, (for, for this has a man been convicted of murder) — if this be what at present you want to know, in the newspaper you may be sure to find it; in the record you will be sure *not* to find it.

Such, for exigencies of all sorts, being the provision made by common law before the birth of equity, — made in the common-law courts, before the formation of the equity courts, — behold now the account given of it by *Blackstone*.

Speaking of an old book in Latin, called the *Registrum Brevium*, — composed chiefly of forms of orders called *writs*, given in the name of the king to the sheriffs, — in it (says he, III, 184,) "*Every man who is injured* will be sure to find *a* method of relief *exactly* adapted to his own case, described in the compass of a few lines, and yet *without the omission of any material circumstance.*" So much for Blackstone. To the dream of this reporter, would you substitute the sad reality? For *a* put *no:* for *omission* put *insertion:* make these corrections, the picture will be nearer the truth. Dates none, arrangement none, other than the alphabetical, either in the collection itself, or in Judge Fitzherbert's commentary on it, and in the additions made to that commentary in any subsequent editions made of it. So much for the universal oracle. Such is the source from whence the notions of the universal unlearned, as to what the law is, have down to this time been derived!

To return to Equity court. In the provision made by common law, gaps requiring to be filled up, sure enough sufficient: sufficient in number, sufficient in magnitude: necessity of filling up sufficiently urgent. But, for the filling them up, was any additional court, either a necessary or so much as a proper instrument? An additional court thus kept distinct and separate from the court to which it was added? More particularly, a court invested with such powers as, in relation to the court it was added to, were assumed by this same so called *court of equity?*—a court superior to it in effective power, and yet without being, either in name or nature, a

court of appeal from it? Taking up the matter at the pleasure of any man, who, without any ground whatsoever, would pay the price set upon the injustice at any stage of the suit, riding over the competent authority, and rendering useless everything that had been done, and throwing away every penny that had been expended in that same judicatory? The thus maltreated judicatory all the while not the less abundantly lauded, for the being regarded as requiring to be thus dealt with?

A sort of severance this, mischievous enough, — and, as such, worthy enough of remark at any time. But, *at present*, a circumstance which gives to it, in the particular case in question, a particular degree of importance, — gives, to the particular case of severance here in question, and produces accordingly the need for thus dwelling on it, is — the care, which, on the occasion of the *recently instituted improvements*, has been taken, to keep it up (this same severance,) and, of course, along with it, the uncertainty, delay, vexation, expense, and lawyer's profit, engendered by it.

Lastly, as to the aggregate composed of the four courts thus instituted, — the several separate denominations of necessity attached to them, the jurisdiction formed by the several splinters thus put side by side, and the mischievous consequence flowing of course from the very nature of the operation — splitting and splicing operation.

Of the application thus made of so many different names, the consequence is — the implied information and assurance of the existence, and thence of the necessity, of so many different natures, and modes of proceeding on the part of the several courts thus differently denominated.

In the case of these denominations, what serves to fix and thicken the cloud composed of them is, their being derived from different sources: in some cases, the source is the name of the *species*, or rather, as will be seen, the *sub-species* of suit; in other cases, the *initiatory process* — that is to say, the *written instrument* by the delivery of which, or the *operation* by the performance of which, the suit takes its own commencement. Behold them; here they are: —

I. Under the species of suit termed *civil*, name of the initiatory process, if in the Common Pleas, *action:* if in the King's Bench, in one sort of case, *action* likewise; in another sort of case, comes the name of the instrument, *mandamus;* name of an operation by which it is preceded, *motion for a mandamus;* in another sort of case, name of the instrument, *quo warranto;* name of the antecedent operation, *motion for a quo warranto:* in an Equity court, including the equity side of the amphibious court — the Exchequer — *bill;* in the common-law side thereof, *action;* in another sort of case, in a Christian court, name of the instrument, *libel.*

II. Under the species of suit termed *criminal* or *penal* — common to all these courts in one sort of case, is one sub-species, *attachment:* to which denomination is in some cases substituted the circumlocutory and milder denomination, constituted by the antecedent operation — *motion that the defendant may answer the matter of the affidavit* (this being the initiatory instrument:) in another sort of case, in the King's Bench, name of one sort of instrument, *indictment;* in the same sort of case, in that same court, name of another sort of *instrument*, *information:* name of the *antecedent operation*, *motion for leave to file an* INFORMATION: in the same sort of case, still in that same court, name of the instrument again, *information:* name of the antecedent operation, *filing an information*, to wit by the attorney-general, without *motion;* in another sort of case, in the Exchequer, name of the instrument *qui tam information:* in another sort of case, in the Christian court, name of the instrument, *libel* again: note here, by the bye, in the case of this word *libel*, the confusion further thickened, by the giving to one and the same appellative the commission of officiating as the sign of two opposite things signified: namely, an alleged *disorder*, and a professed *remedy*.

Sufficient, it is hoped, this exhibition, without the addition of the rarer sorts of suits, such as the *scire facias* and its *et cæteras*.

Such is the enrichment which the vocabulary of English jurisprudence has actually received, from the principle pursued by this practice: the employing different operations with different instruments, for the attainment of the same end. What bounds are there to the ulterior enrichment, which, from the same principle, it might, with as good reason, be made to receive? Take a few examples: —

First, as to *courts:* by multiplication given to the names, and with them to the species, of these judicatories. One example may here serve. Take for a model the *court of equity*, with this its sentimental name: additional courts with like imitative names — court of *probity*, court of *integrity*, court of *common honesty*, court of *honour*, court of *righteousness:* another such winning name, court of *conscience*, in point of propriety, forming a striking contrast with the court of equity, has already been brought into employment by statute law.

Take secondly and lastly, for the instrument of multiplication and confusion, the name of the instrument, by which commencement is given to the *process*. Model, in this case, the word *libel;* — a word meaning, in the original Latin, a *little book:* proposed imitative names of instruments — *leaf, sheet, roll, scroll, volume.* Yes, *volume:* for, in some cases,

in equity more especially, scarcely to the existing sort of instrument — the *bill*, to wit — would even this appellative, notwithstanding the seeming exaggeration, be altogether misapplied.

Now as to the degree of *appositeness*, with which the signs are here coupled with the things signified. For an emblem of it, take two hats: into one put the *things;* into the other the *signs;* which done, then, having drawn out of the one a *thing*, draw out of the other a sign for it: as, on a Twelfth-day, styles and titles are coupled with slices of cake and names of cake-eaters.

In the aggregate of all this surplusage, may moreover be seen, one out of the host of visible examples, of the way in which, by the English lawyer, as by the astrologer, — and for the same purpose, — has been created, out of nothing, a sort of sham science.

Correspondent to this science, with the art belonging to it, is the list of official functionaries, employed, on this occasion, in the exercise of the art. Note well the multiplicity and ingenious variety of their denominations. By one single one alone of the four Westminster-hall courts, the King's Bench, is furnished the list which follows. But, for a standard of comparison, note first the sorts of functionaries which, under the official establishment hereinafter proposed for giving execution and effect to the here proposed natural system of procedure, would be requisite and necessary under the command of the judge. Here it follows: — 1. *Registrar;* 2. *Prehensor*, or say *Arrestor;* 3. *Summoner;* 4. *Doorkeeper;* 5. *Jailor*. Now then follows the list of those actually in existence as above under the King's Bench:* — "1. Chief clerk; 2. Master; 3. Marshal of King's Bench prison; 4. Clerk of the rules; 5. Clerk of the papers; 6. Clerk of the dockets, judgments, satisfactions, commitments, &c.; 7. Clerk of the declaration; 8. Clerk of the common bails, posteas, and estreats; 9. Signer of the writs; 10. Signer of the bills of Middlesex; 11. Custos brevium; 12. Clerk of the upper treasury; 13. Clerk of the outer treasury; 14. Marshal and associate; 15. Sealer of the writs; 16. Judge's clerks; 17. Sheriffs of London and sheriff of Middlesex; 18. Secondaries; 19. Under-sheriff; 20. Ushers, tipstaffs, &c." Here at length ends the list of the swarm of locusts which buzzes about this one of the four courts — the King's Bench: places of feeding, no fewer than ten: some of them not less than three miles from one another. Calculate who can, the quantity of time consumed, with expense correspondent, by attorneys, in the journeys necessary to be made all over this labyrinth.

* Taken from an instructive little treatise, intituled, a Complete History of an Action at Law, &c. by Thomas Mayhew, Student of Lincoln's Inn, 1828: pages, no more than 82.

XIV. *Result of the Fissure — Groundless Arrest for Debt.*

Comes now the battle royal:—battle of the courts: battle for the fees. Result, groundless arrest. As at present, on pretence of debt: effect, imposed on innocence an aggregate of suffering, vying in severity with that inflicted on the aggregate of crime.

Let it not here be supposed, though it were but for a moment, that, on imprisonment for debt, condemnation without reserve is meant to be pronounced. Condemn in the lump — condemn without exception — imprisonment, and even imprisonment for debt; for debt you would condemn all satisfaction, and as well might you, for all crime, condemn all punishment.

Look for the proper time, you will find it in that of the *second* of the operations requisite to be performed in the course of the suit: at the time of, and by, the first, the existence of an adequate demand for this same second operation having been ascertained: improper time, that of the first operation: this same first operation being the arrest itself, performed without any such ascertainment: performed by the judge, without inquiry, and at the pleasure of any one who will purchase of him this service, at the price he has set upon it: — upon so simple a distinction turns, in this case, the difference between the perfection of good, and the perfection of evil.

Ascertained (asks somebody,) the existence of this same adequate demand, by what means? Answer: By this means — To give commencement to the suit, attends in court the plaintiff, and stating his demand, states at the same time the need there is of the arrestation: subject-matter of it, either the body of the proposed defendant, or some property of his, or both: this operation in the next instance: otherwise on hearing of the demand, off go person, or property, or both, and therewith all hope of recovery for the debt — all hope of effectual justice.

Mark now the security afforded by the here proposed course, against the oppression now so completely established, and so abundantly exercised—the oppression exercisable at pleasure by any man in the character of plaintiff, on almost any man in the character of defendant: at the same time, the superior efficiency of the means afforded for the recovery of the debt.

Being thus in the *presence*, the applicant is completely in the *power*, of the judge: unlimited is the amount of the punishment, to which, in case of purposed and mischievous misrepresentation, he may be subjected. In this state of things, two opposite dangers present themselves to the judge's choice: in case of the non-exercise of this power of precautionary seizure, — danger of injustice to the

detriment of the plaintiff, by loss of the debt; in case of the exercise of this same power, danger of injustice, to an indefinite amount, to the detriment of the proposed defendant thus dealt with.

Between these two opposite mischiefs, who does not see, that no otherwise than by a scrutiny into the circumstances of each individual case, can any tolerably well grounded choice be made? and, for this scrutiny, no source of information has place as yet, other than the evidence of the applicant, extracted by his examination: an information, without which, or any other, under the existing system, arrestation is performed without scruple; that is to say, on the *body;* and with as little might it be, though at this stage of the proceedings it never is, on *property*.

This power, then, either it is exercised, or it is not. If yes, security will need to be taken for two things: 1. For the applicant's effectual responsibility, to the purpose of compensation or that of punishment, or both, as the case may require; 2. For his being eventually reached by a mandate, or, in case of need, by a functionary armed with a warrant for arrestation, wheresoever it may happen to him to be, during the continuance of the suit: — a security this last, the demand for which (it may be seen) has place in the instance of every person, to whom, for whatever purpose, in whatever character, it happens to have presented himself to a judge. a security with which, for reasons that will be seen, Judge and Co. know better than to have provided themselves with.

Why say *attendance*, not *appearance*? Because, by lying lips and pens, the word *appearance* has been to such a degree poisoned, as to be rendered unfit for use. When, in the record, entry is made of what is called the defendant's appearance in court, what is the real fact? Never that he, the defendant, has made his appearance in court; always that an attorney employed by him has made *his* appearance: nor even this in the court, but in another place; to wit, in one of the offices, of the nature of those contained in the above-mentioned list.

To return to the applicant's here proposed actual attendance. In most instances it will be possible, and with advantage practicable. But in some instances it will be either impossible, or not with advantage practicable. Of these last cases, for the purpose of the here proposed system, a list has been made out: so likewise of all the *shapes*, of which the just-mentioned security is susceptible; which list may be seen below: so likewise of all the several diversifications, of which the mode of securing *intercourse*, or say *communication*, with an applicant, or any other person who has made his appearance during the continuance of the suit, is susceptible.

For the institution of this little cluster of arrangements, a combination of common sense, and common ingenuity, with common honesty, was indeed necessary, but at the same time sufficient. In the provision made by the existing system, where is there to be seen any symptom of the union of these same requisites? How should there be? Without the existence of the applicant in the presence of the judge at the outset of the suit, nothing of all this can be done: and, as there is such continual occasion to observe, scarcely can the presence of a *dun* be more appalling to a spendthrift, than, in a *civil* case, to an English supreme-court judge, the presence of an individual, whose property (and under the system of mechanical judicature, as hath been seen, in most cases without knowing anything about the matter) he is disposing of.

Now, for want of some such as these proposed arrangements, under the existing system, behold the state of things. General rule this: At the pleasure of any man, without grounds existing, or so much as pretended to exist, any man may be arrested and consigned to a jail, with no other alternative than that of being, if able and willing to pay for the accommodation, consigned to an arresting-house, called a *lock-up-house*, or a *spunging-house*.

Exceptions are—1. Where the debt does not amount to so much as £20; 2. Where, when it does amount to that sum, the plaintiff omits to make an affidavit, whereby he avows upon oath that the sum demanded by the suit is justly and truly due. And this, without adding *upon the balance:* so that a man to whom another owes £20,000, may be arrested by him, on a particular account specified, for £20. Originally the sum mentioned on the occasion and for the purpose of the limitation thus applied, was no more than £10: it is by a recent act that it has been raised to this same £20, in the year of our Lord 1826: original act, that of the 12 Geo. I. ch. 28; year of our Lord 1725. Date of the act under which, for the benefit of the Court of Common Pleas, the practice of arrest for debt was established, year of our Lord 1661: thus had the abomination been reigning a hundred and sixty-five years before so much as this alleviation was applied to it. Yet, such as it is, keen in Judge and Co. was the sense of the injury thus done to the whole partnership. Faces, lengthened by the recollection and report of it, were witnessed by persons yet alive.

Oh precious security! Mark now a set of incidents, any one of which would suffice for rendering it ineffectual: —

1. In case of *mutual* accounts, a man who is a debtor on the balance, and moreover in a state of insolvency, in such sort as to be incapable of making compensation for the wrong, is free to make use of it in such sort

as to inflict vexation, and perhaps ruin, on the creditor thus dealt with.

2. No limit is there to the multitude of knowingly false demands, which, to the wrong of one man, may thus be made by any other, and this without his being at the expense of a perjury; by which, however, if committed, he would not, in more than the trifling degree which, under the head of *oaths* has been seen, be exposed to hazard.

3. To a man who is about to leave England, having therein no property, or none but what he is taking with him, or none which, by such inadequate means as the law affords, can be come at, this apparent check is, it will be seen, no real one.

4. On so easy a condition as the finding another man, who, being a man of desperate fortunes, will, for hire, perform his part in this so extensively contemned ceremony, — any man may cause his intended victim to be arrested for sums to any amount, and thereby for a sum for which it will not be possible for the victim to find bail.

5. The assertion is admitted, without being, in any case, subjected to cross-examination. Hence the invitation to mendacity and perjury.

6. To those alone whose connexions on the spot, in addition to the opulence of their circumstances, admit of their finding bail, is the privilege of being conveyed to a spunging-house instead of a jail, extended.

So much for inadequacy: now for incongruity. To the above-mentioned efficient causes of inadequacy, may be added the following features of incongruity, relation had to the existing system: —

1. Swearing to the existence of the debts, the affidavit-man is forced to swear to his knowledge of the state of the law: that same law which, with such successful care, it has been rendered and kept impossible for any man to know.

2. The testimony thus delivered, is testimony delivered by a man in his own favour, in contradiction to a rule and principle of common law. Note that *inconsistency*, not *inaptitude*, is the ground of condemnation here.

General result — with the exception of the privileged few, every man exposed to ruin at the pleasure of every other, who is wicked enough, and at the same time rich enough, to accept of the invitation which the judges and their associates in the iniquity, never cease thus to hold out to him.

So much for the *evil* done by the battle, and the *good* which so obviously should have occupied the place of that same evil. Now for the battle itself. Origin of the war — power, thence custom, surreptitiously obtained from parliament by the judges of the Common Pleas, a little after the Restoration, at the expense of the judges of the King's Bench. The power thus obtained was, that of employing, in an action for *debt*, this same operation of arrest, in giving commencement to the suit. By the known acquisition of this power, was made, to all who would become customers, the virtual offer of the advantage that will be seen. In the case of the honest plaintiff, it consisted in the obtaining his right in a manner more prompt and sure than before: in the case of the dishonest plaintiff, to this same advantage was added, as has been seen, the power of ruining other persons, in a number proportioned to the compound of cupidity, malevolence, and opulence belonging to him, at pleasure.

This plan succeeded to admiration. Common Pleas overflowed with customers: King's Bench became a desert. Roger North, brother and biographer of Lord Keeper *Guildford*, at that time chief-justice of the Common Pleas, depictures, in glowing colours, the value of the conquest thus made. At this time, *Hale*—the witch-hanging *Hale*—prime object of Judge and Co.'s idolatry — was chief-justice of the King's Bench. Chagrined, to the degree that may be imagined, by the falling off of his trade, he put on, of course, his considering cap. What was to be done? After the gravest consideration, he at length invented an instrument (as a manuscript of his, published in Hargrave's Law Tracts, informs us,) — an instrument, with the help of which he himself, with his own hands, succeeded in stealing that same power which the legislature had given to the court of Common Pleas. Yes: so he himself informs us: so blind to the wickedness of telling lies, and getting money by it — so dead to the sense of shame had been made, by evil communication, this so eminently pious, as well as best-intentioned judge, that ever sat upon a Westminster-Hall bench. Name of the instrument, the *ac etiam*: description of it not quite so short. To give it, we must go back a little.

At the primeval period so often mentioned, the great all-competent judicatory had received, of course at the hands of the Conqueror, this same power of arrestation, applicable at discretion. At the time when, by the original *fissure*, the allotment of jurisdiction was given to the Common Pleas — to that judicatory, to enable it to give execution and effect to its decrees, was given the power of operating, to this purpose, on property, in certain of its shapes: the power of operating on person not being given to this court; except that, at the end of a long-protracted course of plunderage, of which presently, came the process of *outlawry*: outlawry — a rich compost, in which, in a truly admirable manner, barbarity and impotence, to the proper and professed purpose, were combined.

On this same occasion, the cases remaining to the King's Bench branch of the all-comprehending jurisdiction, after the fissure, were those in which, under the name of *punishment*, suffering was purposely inflicted: sometimes called *penal*, sometimes *criminal*, was the class composed of these cases. By the words *treason*, *felony*, and *misdemeanor*, were originally marked out so many degrees (treason the highest) in the scale of punishment: with like effect, between felony and misdemeanor, was afterwards inserted the word *premunire*. In process of time, a little below *misdemeanor*, King's Bench contrived to slip in the word *trespass*: and thus armed, as opportunity served, it began its encroachments on the jurisdiction and fees of the helpless Common Pleas.

Misdemeanor meant and means *misconduct*, or say *misbehaviour*: *trespass* meant *transgression*: *transgression*, in the original Latin *transgressio*, is the going beyond a something: the something, on this occasion understood, was of course a law. Not that any such thing was in existence: no matter. On this, as on every other part of the field of common law, it was feigned.

When, for anything or for nothing, it was the pleasure of the king, or of any man whom it pleased him to allow thus to act in his name, that a person should be dealt with in this manner, plaintiff's attorney went to the shop, and the foreman, on hearing it, sold him an order directed to the sheriff, in the body of which instrument that functionary was informed that defendant had committed a trespass; and from the sheriff, the information would, in course, pass on to the defendant, when the time came for his finding himself in Lob's pound.

In process of time came a distinction: a distinction between *trespass* simply, and trespass *upon the case*. Much the wiser the defendant was not for the information, in either instance, how much soever the poorer: trespass meant nothing except that the man was in the way to be punished, and trespass upon the case meant just as much.

Here, then, were two instruments: now for another such: this was the word *force*. Whatever was done, by *force* not warranted by legal authority, was (it was seen) in everybody's eyes a *crime*: out of this word was accordingly made this other power-snatching instrument. One vast acquisition thus made with it, and it was a vast one, was the cognizance of suits having for their subject-matter title to landed property. To every man who claimed a portion of land, intimation was given — that, if he would say he had been turned out of it, instead of *turned out* using the word *ejected*, relief should be given to him by King's Bench: relief, by exemption from no small portion of the delay, expense, and vexation, attached to the preliminary, and, as will be seen, so ingeniously wire-drawn, process of the Common Pleas. *Ejected* means turned out by *tossing*: and how could anybody be tossed out of anything without force?

Emboldened by success thus brilliant, they went on — these pre-eminently learned and ingenious combatants — to the case of *adultery*. Here, court *Temporal* had to fight with court *Christian*, alias *Spiritual*. Court *Spiritual* had seen in this practice a *sin*, and dealt with it accordingly. With this sin Common Pleas had found no pretence for intermeddling. More fortunate, more bold, and more sharp-sighted, was his lordship of the King's Bench. He saw in it (so he assured and continues to assure the sheriff) a species of *rape*: a crime of some sort it was necessary he should see in it, and the nearest sort of crime was this of *rape*. It was committed, he said, *vi et armis* — by *force and arms*. This invention was quite the thing: that *arms* had, in every case, more or less to do in it, was undeniable: and seeing that, on the occasion in question, motion could not but have place, and considering that motion can scarcely be made without a correspondent degree of force, thus was this part of the charge made good: and in return for their custom, injured parties received from the learned shopkeeper, at the charge of the adulterers, money under the name of *damages*.

Inconsistency was here in all its glory: *crime* had *punishment alone*, not *damages*, for its fruit. This was a principle: yet adultery was thus made into a crime, and at the same time made to yield damages: it was thus a *rape* and *not rape*: rape, that it might be made into a crime; yet not rape, because, if it were rape, adulterers would be all of them to be hanged: to which there were some objections.

Of the weapon employed on this occasion, the form was the same, as that of the weapon employed, as above, in the war with the court of Common Pleas; and here follows a further explanation, for which, it must be confessed, *that* former place was the more proper one: but, in discourse, clouds are not quite so easily dissipated as formed. Speaking to the sheriff after commanding him to take up the defendant on the ground of an accusation of *trespass*, — trespass not giving intimation of anything, except the eventual design of punishing as for a crime, — his lordship went on to add, *as also* to a demand on the score of debt, to an individual (naming him.) Here then, by his learned lordship, were two real crimes committed in the same breath, for the purpose of pretending to inflict punishment for, and really reaping profit from, this one imaginary crime: one at the charge of the Common Pleas judges, to whom alone, by *Magna Charta* as above, belonged the cog-

nizance of cases of debt: the other, at the charge of every member of the community, thus subjected to the power of groundless arrest and imprisonment, as above. On this occasion, in dumb show — dumb indeed, but not the less intelligible — was this his language: — "All ye who believe yourselves to be in the right, and all ye who know yourselves to be in the wrong, but, at the same time, wanting the accommodation for the purpose of ruining some person you have fixed upon, come to my shop: there is my prison, and to it he or she shall go."

Thus much to wished-for customers. Now to the sheriff: "Take up *Thomas Stiles*, and put him into your jail: when there, he *will be* in our power, we will make him pay a sum of money which *John Noaks* says he owes him." Such, in the address of the chief-justice to the sheriff, was and is the language of the appropriate document — the only source, from which any conception could be formed, of the calamity into which the proposed defendant was and is thus destined to be plunged. It was a *writ*, addressed to the sheriff of the county in which the defendant was, or was assumed to be, resident — "Will be in our power?" Be it so: but, suppose him actually in their power: — his being so, did it give them, in relation to their younger brethren of the Common Pleas, any right which they did not possess before?

As to his being already in their power, neither was this the case, nor was it so much as supposed to be. But, should it so happen that the sheriff had taken the man up and brought him to his lordship, whose clerk's signature is to the writ, then the destined victim would be in his said lordship's power, and then he would make him comply with the demand, or defend himself against it, or abide the consequences.

As yet here is no lie. But, if the supposed residence of the destined defendant were anywhere but in Middlesex, then came the demand for lies, and with it the supply. *Lie the first*—averment that defendant's residence is in Middlesex: and by this was constituted the warrant, such as it was, for *writ* the first, with its fees.

Lie the second — said defendant is lurking and running about (*latittat et discurrit*) in this county of : the blank being filled up with the name of the county in which it suits the purpose of the plaintiff, or his attorney, to suppose him to be. This is what he was and is told, in the text of another writ, addressed to the sheriff of county the second, for whose information the writ, addressed to his brother of Middlesex, is thus recited, and the difference between the cost of the one writ and that of the two writs, is a tax or penalty, which all persons who omit to live in Middlesex pay for such their default.

Such was the plan of the counter-invasion. Serious and sensibly felt it cannot but have been, to the potentate whose domain was thus invaded.

How to get back the advantage was now the question. Under English practice, *deception* (need it now be said,) is, on each occasion, the readiest, most efficient, and favourite instrument. A man had forged a hand: — "Don't trouble yourself about proving the forgery," said his learned adviser; "forge a release." A similar instrument was accordingly fabricated by the Common Pleas, and succeeded. Not but the re-conquest had some difficulties to contend with: for (as honest Roger informs us,) king's tax and chancellor's fees were affected by it: but these difficulties being the only ones, and these removed, King's Bench's mouth was thus closed.

No hypocrisy here. For a cloak of any sort, no demand so much as suspected. Two sharpers playing off their tricks against one another — such is the character in which, even with his approbation, the two lord chief-justices are held up to view, by this confidential brother of one of them. "*Outwitting*," one of the words employed: "*device*," another. Increase of business the avowed object: of business such as has been seen: proportioned to the success, the exultation produced by it: proportioned to the amount of the booty, the triumph of the irresistible robbers.

Sole interests so much as pretended to be consulted, the interests of Judge and Co. Of this firm, his Majesty was, as above declared, one of the partners: the swinish multitude, with their interest, no more thought of, or professed to be thought of, than so many swine.

The King's Bench was not the only place at the hands of which the helpless offspring of Magna Charta lay exposed to invasion. Another inroad was that made by the court of Exchequer. In the pretence made in this case, no such downright and all-involving lie was, however, included. In this case, the king was indeed stated as delivering the commandment; and, forasmuch as his Majesty knew not, on any occasion, any more of the matter than the Pope of Rome — in this shape, and thus far, was a lie told. But that which his Majesty was represented as insinuating, though but insinuating, had commonly more or less of truth in it. It was, that the plaintiff was in his Majesty's debt: a state of things which would, of course, have place, in the instance of any man, who had tax to pay, or service to render.

But this same court of Exchequer, to which no such power had been given, what business had it to meddle or make, while there sat the Common Pleas, to which the power *had* been and continued to be given? Had there even been no such judicatory as the Common Pleas,

the only persons, in whose instance anything done by the Exchequer could contribute to the proposed effect, would have been such as were in a state of insolvency: nor yet all of these: for, till all demands on the account of the king were satisfied, never was so much as a penny allowed to be touched by any other creditor than his said Majesty. Yes, as above observed, *insinuating* and nothing more. For all that his Majesty is represented as saying is, that *the plaintiff says* he owes a debt to his said Majesty, not that such is really the case.

So much for this enormity. Out of it grew another, to which the word *bail* gives name. *Finding bail*, as the phrase is, is the name of one species of those *securities*, allusion to which has been made, as above. In this case, after having been arrested by an emissary of the sheriff's, and consigned to the appropriate gaol, or, on paying for the indulgence, kept in the house of this same emissary, or some person connected with him (name of the house, a *lock-up-house* or *spunging-house*,) he is, if certain persons render themselves responsible to the sheriff, or without this security, if the under-sheriff so pleases, liberated. These persons are styled the bails: number of them, one, two, or more, commonly two. As to what they undertake for, it is, in different cases, different: but, for the most part, it is the consigning the defendant to the gaol, or else satisfying the plaintiff's demand.

As to the remedy which this same security affords — nothing could be more completely of a piece with the so industriously and inhumanly fabricated disease. To the comparatively opulent, an alleviation — to the comparatively indigent, an aggravation. Complete, in an admirable degree of perfection, is the machinery employed in the application of it: to such a degree, that lengthy treatises are occupied in the description of it: enormous the complication — proportionable, of course, the delay, vexation, and expense, produced by it.

As to all this suffering, what do Judge and Co. care about it? Just as much as they care for the rest of the mass of suffering which the system, in its other parts, organizes — what a steam-engine would care for the condition of a human body pressed or pounded by it.

Directed to its proper end, the process of *judicial security-finding* is an operation, having for its object *alleviation* to the hardship inseparable from the process of subjecting a patient to the sorts of operations performed upon him by the judge: in each individual case, applying the maximum of the alleviation of which that particular case is susceptible. To all the several modifications of which this hardship is susceptible, to apply one and the same modification of this process — is about as reasonable as it would be to apply, to every species of disease, one and the same medicine.

Of the modifications of which this process is susceptible, we shall presently have occasion to present a view to the Honourable House.

On each occasion, to the circumstances of the individuals in the individual case, does the nature of things render the adaptation of it necessary: and on no one occasion, under the existing system, can it be thus adapted.

In some cases, of which the present case is one, on the *defendant;* but in other cases, and on the occasion of every suit in the *first* instance, that is to say, at the *outset* of the suit, on the *plaintiff*, does the obligation require to be imposed. In each such instance, to the elicitation of the same individualizing circumstances, the examination of the individual by the judge himself is necessary: and to this process (one exception excepted, of which presently,) not more unquestionable can be the abhorrence of the most profitable *malâ fide* suitor, than, under the existing practice, that of an English judge.

On each occasion, the subserviency of the operation to the purposes of justice will depend upon the proportion of the hardship of being subjected to the particular obligation in question, and the hardship which, were it *not* imposed, might have place: *probability* being, in both cases, taken into account.

As to incarceration and confinement, the more extentious and vexatious the modes of them respectively are, the more urgent is the motive by which the sufferer is impelled to make choice of this *bail-finding*, or any other, mode of escape from them: escape, perpetual or temporary only, as the case may be: choice, that between the fire and the frying-pan. Whichever it be that is embraced, the exigencies of the lord chief-justice were of course effectually and abundantly provided for: from the bailing process, fees upon fees: from the incarceration, a vast mass at once in the shape of patronage. Forty thousand pounds has been stated as having been refused: on the occasion of the recently alleged mutiny, from £8,000 to £10,000 a-year stated as being the profit of the jailor. To ascertain in each case the quantum of the enjoyment extracted by these two associates from the misery of the many — the quantum, and thence the proportion — is among the operations, the performance of which we beg leave, with all humble submission, to propose to the Honourable House.

Required at the hands of *plaintiffs*, the security would have kept out *dishonest plaintiffs* — Judge and Co.'s best friends and customers. Of course it was not to be thought of. Hypocrisy required that the profession should be made: and so, in the language of some of the courts, it was made: — *si fecerit te securum:* sinister interest required that it should be no better than a pretence.

Performed or exacted of defendants, directly opposite is the effect of this same secu-

rity: thus placed, the obligation renders the above-mentioned ample service.

As to this matter — the jakes, of late so notorious by the name of the *secondary's office* in the City of London — this abomination, with the immense mass of filthy lucre at the bottom of it, and the forty years' patience of the constituted authorities under the stench of it, speaks volumes.

To the case in which the process of taking examinations was, and is, an object of abhorrence to the judge, an objection has just been alluded to as having place. It is this. To the sight of mere *parties*, and in particular in the situation of plaintiffs, at the outset of the suit, at which stage the examination might nip it in the bud, abhorrence unassuageable: — to persons coming in, at a stage at which the suit is established, and the examination can have no such injurious effect, open arms and welcome. Why this difference? Answer: At the first stage, the examination would exclude fees: at this subsequent stage, it necessitates fees.

To the performing or hearing the examination of a party in relation to the matter of his suit, the horror of an English judge is, as above, insuperable. To the hearing and conducting the examination of the same man under the name of a *bail*, in relation to a matter foreign to the matter of the suit, — repugnance none. Cause of difference, the so often assigned universal cause. Examination of the party, the time being that of the outset of the suit, would, as above, nip the fee-harvest in the bud: examination of bail gives increase to it.

After all, it depends upon incidents — incidents too intricate to be here developed — whether it is by the four sages — or now, of late days, one of them — that the opposition and eventual justification — so the examination is called of the bail — shall be performed, or by some attorney, without the benefit of that same scrutinizing process.

The attorney is an under-sheriff; — the under-sheriff of the county in which, as above, the species of egg called the *venue*, has been *laid*, or into which it has been *removed*.

The under-sheriff is, on every occasion, the deputy of the sheriff. The sheriff is a great land-owner who (every year a fresh one,) is appointed by the king: a servant who, in the teeth of reason and scripture, is appointed to serve not two only, but twice two masters: that is to say, at the three Westminster-Hall common-law courts, with the addition of the court of general sessions of the peace.

To this same business, as well as to all business but that of parade, the sheriff contributes — what a Roman emperor used to contribute to a victory gained at a thousand miles distance — *auspices:* the sheriff, auspices: the attorney, mind and legal learning: legal learning, an accomplishment in which, authorized by their sanction, the *one*, in so inferior a degree learned, thinks it not *robbery* to be equal to the *four* sages.

If, with the requisite amendments, necessitated by change of times, the system of local judicatories were restored, — each judge would, for all purposes, be provided with his own ministerial subordinates: and for all of them he would be responsible.

In the city of London, the acting functionary under the sheriffs is styled *the secondary*. Forty years of depredation, production of so many unheeded mountains, heaped up one upon another, of correspondent misery, have at length attracted to the subject the attention of the local authorities. But, while eyes are shut against causes, eloquence may abound, effects all the while continue undiminished.

Moreover, in the same bailing process there is a gradation: witness the phrases *bail below*, and *bail above*. Bail *below*, are bail whose aptitude is established by the attorney. Bail *above*, are bail whose aptitude, after or without opposition, is established by the four sages. Bail *above* are, in some cases, the bail *below*, thus promoted: in other cases, a fresh couple.

Above and *below* together, bail generate *bail-bond:* bail-bond, *assignment* thereof, with eventual suit: bond, assignment, and suit — fees. To justice, use for bail and assignment the same as for an old almanack.

From these particulars, imperfect as they are, some conception, how inadequate soever, may be formed, of the proportion in which the aggregate property of all the unfortunates so arrested, is transferred from the ordinary and undignified destination of operating in satisfaction of debts, to the dignified function of contributing to the fund provided for the remuneration of legal science.

Note here, that he who makes a prudent use of the offer so liberally held out by the judges to every man — the offer thus made to ruin for him, on joint account, as many men as he wishes, will take care that the debt sworn to shall be greater than the utmost sum, for which, for love or money, bail can, by the destined victim, be procured.

Here ends our exposition, and we humbly hope the sufficient exposure, of the devices, by the too successful practice of which, the attainment of the ends of radically corrupt judicature have been substituted to that of the ends of justice.

Praying thus for justice, and *that* justice accessible, we proceed to pray for the means necessary to the rendering it so: rendering it so, to all of us without exception. In particular, — of the arrangements which, in our eyes, are calculated to produce that so desis

rable effect, and for the establishment of which we accordingly pray, — a brief intimation is presented by the propositions following: —

I. First, as to the JUDICIARY ESTABLISHMENT.

1. That, for suits of all sorts, criminal as well as civil, there be two *instances*, or say *stages*, or *degrees*, of jurisdiction: style and title of the judges, before whom the suit is brought in the first instance, *judges immediate* — of those before whom it is brought in the second instance, or say in the way of *appeal*, *judges appellate*.

2. That, with two exceptions, and these as limited as the nature of the service will permit, to each judicatory, cognizance be taken of all sorts of causes: those included, cognizance of which are at present taken by the aggregate of the several authorities by which judicature is exercised: which courts will have to be abolished, as soon as the causes respectively pending before them, shall have been disposed of. This, to exclude complication, uncertainty, collision, delay, and useless expense.

3. That these exceptions, and these the only ones, may be the following: — *Military* judicatories, for the maintenance of discipline, land and sea service included: and *ecclesiastical* judicatories, for the maintenance of ecclesiastical discipline, on the part of ecclesiastical functionaries, belonging to the established church.

4. That, for taking cognizance of suits in the first instance, judicatories may be established in such number and situations, that, by an individual whose house is the most remote from the judicatory which is the nearest to it, the portion of time, during which in the day in question the justice-chamber is open, may be passed by him therein without his sleeping elsewhere than at his own home: and that, accordingly, no individual may have more than twelve miles or thereabouts to travel, in order to reach his own judicatory.

5. That, as in the existing principal court, there be not, in any instance, sitting at the same time, any more than one single judge. This, for individual responsibility — the sole effectual — as well as also for saving expense and delay by mutual consultation and argumentation.

6. That, to obviate delay and failure of justice, every such judge be empowered and obliged to provide substitutes, styled as in Scotland, *deputies*, one or more, having for their sole remuneration the prospect of being constituted *judges principal*: and that when there has been time for a competent length of probation, no man, who has not served as depute, shall be capable of being constituted judge principal, in which way the provision of *judge power* will be as it were elastic, adjusting itself at all times to the quantity of the demand: judges, thenceforward, none but such as have served an apprenticeship to pure justice, and not to the indiscriminate defence of right and wrong, as at present.

7. That, seeing that, if the power of deputation be conferred as above mentioned, hands in number sufficient for every exigency need never be wanting; every judicatory in the kingdom will hold its sittings every day in the year, without exception, unless needless delay and denial of justice are not deemed more consistent with regard for justice on some days than on others: and that no exception be made by the *Sabbath*, unless and until it shall have been proved that the God of justice is indifferent to justice, and that he who was content that an *ox* or an *ass* should be delivered out of a pit, would be displeased at the animals being delivered out of the hands of the wrong-doer; and that the sale of mackerel on that day is a work of more urgent necessity than the gratuitous and uninterrupted administration of justice: lastly, that no exception be made by the night time, unless and until a night shall have been pointed out during which injustice sleeps; in which so may justice likewise; seeing, moreover, that to certain purposes, under the name of *police*, *justice* is, in certain places, in that part of the twenty-four hours, even under the existing system, actually administered.

8. That, to each such judicatory, be attached a competent set of *ministerial officers*, sufficient for giving, in all ordinary cases, execution and effect to its mandates: but with power, as at present, in case of necessity, to call in aid all persons in general, the military force included. This, instead of the sheriff, that one man who hitherto, in despite of scripture and reason, has been employed to serve not merely two, but twice two masters. This, to exclude the complication, with the consequent collision, litigation, useless expense, delay, and vexation, which from this cause have place at present.

9. That, of these ministerial officers, such as are now employed in the intercourse between judges on the one part, and the respective subordinates as well as parties and witnesses on the other part; such as are now empowered to use force, as well as to officiate without force, be distinguished by some such name as *prehensors* or *arrestors*; the others distinguished from them by the name of judiciary messengers, or, for shortness, *messengers*: and that for trustworthiness and economy, the business of *message-carrying* be, as far as may be, performed by the machinery of the *letter post*.

10. That the remuneration allotted to judiciary functionaries, ministerial as well as magisterial, be, the whole of it, in the shape of *salary*; and that, by no functionary belonging to the judiciary establishment, money

or any other valuable thing or service, under any such name or in any such quality as that of a *fee*, be receivable on any occasion, on any pretence. This, to exclude the expense, delay, extortion, and vexation, which have ever hitherto been produced by the multiplication of judicial instruments and operations for the purpose, and with the effect of giving correspondent increase to the masses of fees.

11. That such remuneration be paid, the whole of it, at the expense of the public at large; no part of it at the expense of any individual or body of individuals interested: fines for misconduct as below, excepted. This, to avoid excluding of any person from the benefit of justice: every person who in the suit in question is not able to pay the whole mass of the fees exacted on the occasion of that suit, being at present, as well as having at all times hitherto been, thus excluded: and because that which the rest of the community enjoy without, litigants do not obtain otherwise than by and with litigation, with its vexation and expense,—the benefit of justice.

12. That, to obviate the danger and suspicion of partiality through private connexion, no judge-immediate principal shall remain in the same judicatory for any longer term than *three* years, or thereabouts: and that, for this purpose, an appropriate system of *circuiting* be accordingly established: but that, for continuing in an unbroken course the business of recordation, or say *registration*, the functionary by whom it is performed be stationary.

13. That, in every justice-chamber, for the better administering of that security, which it is in the power of *public opinion* to afford, for conduct apt in every respect on the part of judges,—commodious situation be allotted for two classes of persons, under some such name as that of *judiciary inspectors*: the one, composed of suitors, waiting for their suits to come on, say *expectant suitors* or *suitors in waiting*; the other, of *probationary lawyers*, of whom presently.

14. That, in all sorts of suits, without exception, a *jury* shall be employable: but, to lessen the aggregate weight of the burthen of attendance,—not till after an *original hearing*, before the judge sitting alone, nor then but by order of the judge, whether spontaneous (for example, for the purpose of confronting such of the evidence as requires to be confronted,) or else at the requisition of a party on one side or the other; in which case it shall be obligatory on him to order and carry on a fresh hearing, termed a *recapitulatory hearing*, or say a *new trial*, before a jury, organized in manner following.

15. That in cases of all sorts, one excepted, all functions belonging to the judge, one excepted, shall be exercisable in common with him, by the jurors: the *imperative*, or say the effectuative, being that on which the effect of the suit depends, being, for the sake of individual responsibility, allotted exclusively to the judge. Functions thus exercisable, these:—1. *Auditive*, applied to everything that is to be heard; 2. *Lective*, applied to everything that requires to be read; 3. *Inspective*, applied to everything that requires to be seen; 4. *Interrogative*, applied to all questions that require to be put; 5. *Commentative*, applied to all observations which they think fit to make; 6. *Ratiocinative*, applied to whatever reasons they think fit to give for anything which they say or do; 7. *Opinative*, exercised by declaration made of opinion, in accordance or discordance with the opinion which, on the occasion of the exercise given to the effectuative function, is pronounced by the judge: exercised collectively, as by juries under the existing system, the *opinative*: exercisable individually, all the rest.

16. That the class of cases, in which the *effectuative* function, as above, shall be exercisable by the jury, so far forth as to render of no effect a judgment of *conviction* if pronounced by the judge alone, shall be that in which the higher functions of government, as such, have, or may naturally be supposed to have, a special personal interest: for example —*treason*, *rebellion*, *sedition*, *defamation* to the injury of a public functionary, or set of public functionaries, as such, and the like.

17. That for lessening the burthen of attendance on juries,—instead of a number so superfluous as twelve, a lesser number, and that, for the sake of a majority, an *uneven* one —that is to say, *three*, or at the utmost, *five* —be employed: by which arrangement, the practice of perjury on the part of juries, in a number varying from one to eleven,—perjury, to wit, by falsely reported unanimity, with torture for the production of it, will be made to cease: for the better direction, one out of three, or two out of the five, being of the class of special jurymen: the foreman being to be of this class.

18. That the institution of a *grand jury*, with its useless delay, incomplete, secret, naturally partial, and inconsistently, though happily limited, applicability,—be abolished.

19. That, for receiving *appeals* from the decrees and other proceedings and conduct on the part of the above-mentioned judges *immediate*, there be judicatories *appellate*, all single seated, in such number as experience shall have shown to be necessary: if more than one, station of all of them the *metropolis*: *that* being the central spot, to which persons from all parts of the country have occasion to resort for other purposes; and at the same time *that* in which the best-formed and most effective *public opinion* has place—public opinion! most influential and salutary check upon the conduct, and security for the good conduct,

of these as well as all other public functionaries: and, as below, no evidence being proposed to be received other than that which has been orally elicited in the court below, and consigned to writing, no attendance by parties or witnesses will, on this occasion, be necessary. And that, after the outset of the here proposed change, no person be capable of serving as judge appellate, who has not for a certain length of time served as judge principal immediate.

20. That, in each judicatory, as well appellate as immediate, for officiating in suits in which government, on behalf of the public at large, is interested — there be a functionary, under the name of the *government advocate*, with *deputation* and on the part of the principal, *migration*, as in the case of the judge: and superordinate to them all, a *government advocate general*.

21. That, for administering professional assistance to suitors who, by relative *weakness*, bodily or mental, are disqualified from acting as plaintiffs or defendants, for themselves, — or, by relative indigence, from purchasing assistance from professional hands, — there be in each judicatory a public functionary under the name, for example, of *eleemosynary advocate:* also with deputes, and migration as above.

22. That, considering how opposite in their nature are the duties and habits of the judge and the advocate, — *impartiality* the duty of the one, *partiality* the duty, and proposed misrepresentation the unavoidable practice, of the other, — no functionary be transferable from one to another of these lines of service.

23. That, at the head of the judiciary establishment, there be placed a single functionary, styled, as in other countries, *justice minister;* at whose recommendation, subject to his Majesty's pleasure, as at present by the *Chancellor*, shall be filled up all other judicial situations.

24. That *accusations* or *complaints* made against a judge, immediate or appellate, on the score of official delinquency, or relative inaptitude from any other cause, be heard and determined by the *justice minister*.

25. That accusations or complaints, made for the like cause, against the justice minister, be heard and determined by the *House of Lords:* and that, on that consideration, no person, during the time of his officiating in the situation of *justice minister*, shall be capable of sitting in the *House of Lords;* nor yet in the *House of Commons*.

26. That, considering the inherent and indefeasible comparative inaptitude of so numerous a body for the purpose of constant and protracted judicature, in *all* cases, and the next to universal habitual non-exercise of this function on the part of their lordships in *criminal* cases; — and that in *civil* cases, their jurisdiction is, in so large a proportion, at present employed, nor could ever fail to be employed, as an engine of delay and expense, operating to all his Majesty's subjects but a comparatively few as a denial of justice, — it may please their lordships to confine the exercise of their judicial function to the above-mentioned cases, with the addition of such criminal cases, in which, at present, a member of their own House is party defendant: — thus making a generous sacrifice of their uncontested rights on the altar of justice.

27. That, when it has been covered by a coating of *legislature-made* law, the field of legislation be preserved from being overspread by an overgrowth of *judge-made* law: for interpretation or melioration, amendments proposed *in terminis* by judges, on the occasion of the several suits, being, by appropriate machinery attached to the code, of course, unless negatived by a committee of the one House or the other, — and that, when these arrangements have been made, no reference, for any such purpose as that of interpretation, to anything said by a judge in any one suit, be permitted to be made in any other suit. Of this arrangement, another use will be — that of their applying the necessary preventive to the mischief which might otherwise be produced, by discrepancy between the decrees of the several appellate judicatories, if more than one. This, when the field of law has been covered by *legislature-made law:* and in the mean time (though not equal facility,) equal necessity will there be for the like provision, during the time that, to so immense an extent, the field has no other covering than that which is composed of *judge-made law:* — of judge-made law — that spurious and fictitious kind of law, if such it must be called, with the dominion of which, so far as it extends, all security is incompatible.*

So much as to the *judiciary establishment:* follows what we humbly pray in relation to *procedure*.

28. That, as in former times, no suit shall receive its commencement, but by the personal appearance of some individual in open judicatory, which individual shall be responsible for his conduct in relation thereunto: and, to that purpose, shall, before he is heard for any other purpose, make declaration — not only of his present abode, but of such abode or abodes, at which any mandate issued by the judge may be sure to reach him at all times, down to that of the termination of the suit: that, for the purpose of all ulterior judicial processes, every missive addressed to him be considered as having reached him: except in case of any such accident as, with-

* Drawn up for this purpose, a complete plan of operations, expressed *in terminis*, is already in existence.

out blame on his part, may come to be alleged by him for the purpose of *excuse:* saving to such applicant the faculty of changing such address, from time to time, on giving timely information thereof.

29. That, exceptions excepted, the person so applying be a party whose desire it is to be admitted in the character of pursuer: of which exceptions, examples are — 1. Giving simple information of an offence, appearance on behalf of any person or persons; 2. Purpose of the appearance, giving simple information, without desire to be admitted *pursuer:* say pursuer, in all cases, instead of plaintiff in civil cases, and prosecutor in criminal cases, as at present.

30. That, for non-compliance with judicial mandates, an all-comprehensive system of appropriate excuses be looked out for, and on the supposition of the verity of the alleged facts, allowance given to them.

31. The person by whom the matter of excuse is submitted, will in general be the person to whom the mandate is addressed: but, in several cases, such as sickness, absence, &c. from other persons, excuses for him must of necessity be accepted.

32. That the institution of *excuse-giving* which, under the name of *casting essoins*, had place in former days, when the attendance of parties, instead of being as now prevented, was compelled — be, for this purpose, reviewed: and the extension which the exigence of justice requires, be given to it.

33. That, on every occasion, the proceedings be regulated by regard paid to *convenience*, to wit, the mutual convenience of all individuals concerned, parties and witnesses: this being a matter which, they being on all occasions in the presence of and under examination by the judge, can, on each occasion, be ascertained: whereas, under the existing technical system, the rule being framed, without the possibility of knowing anything of the distinguishing circumstances of individual persons and things, the necessary consequence is — that, in a vast majority of instances, the convenience of individuals, some or all, is made the subject-matter of a needless and reckless sacrifice.

34. That, all judicatories being sitting every day in the year without intermission, evidence, in so far as indication of its existence has been afforded by the applicant, when admitted as pursuer, be, in such order as in each suit shall be indicated by the exigency of the individual case, from each source, as soon as obtainable, called for and elicited; and this without distinction, as between co-pursuers, co-plaintiffs, defendants, and extraneous witnesses on both sides.

35. That to the institution of *security-finding* in general, and that of sponsorship, or say *auxiliary bondsmanship*, in particular, — be given the whole extent of the application and good effect which the nature of things allows to be given to them.

36. That, accordingly, all the sorts of *occasions* on which, and all the *modes* in which, it is capable of being employed, be looked out for: — for the purpose of employing, on each individual occasion, that mode which may be employed with the most advantage to all interests concerned.

Of *modes* of such security capable of being employed, examples are the following: —

I. Intervention of *bondsmen*, styled *auxiliary bondsmen*, one, two, or more, according to the magnitude of the sum regarded as requisite, and their capacity of contributing to make up such sum; each individual contributing such part as his circumstances enable him, and his inclination disposes him, to contribute: as to the party's joining in the bond, it would, under the here proposed system, be a needless and useless ceremony, the judicatory having his property as effectually at command without it as with it.

II. *Deposit* of *money* by the *party* in the hands of the registrar of the judicatory.

III. *Deposit* of *money* by these same *bondsmen* in the hands of the registrar.

IV. *Deposit* of any *moveable* subject-matter or subject-matters of property of considerable value in small compass, in the hands of the registrar.

V. *Impignoration*, or say *pledging*, of any *immoveable* or any incorporeal subject-matter or subject-matters of property belonging to any such auxiliary bondsmen.

VI. With *consent* of the party, *ambulatory confinement* of his person, he staying or going where he pleases, so it be in the custody of a person or persons appointed for that purpose.

VII. Under the same condition, stationary confinement in a *place* other than a prison.

VIII. At the instance of the party himself, imprisonment. Notwithstanding its afflictiveness, it may happen to this security to be necessary; for example, in a case where, security being deemed necessary to be exacted of the other party, and the finding of that security highly afflictive, the party in question is by strangership, relative indigence, or bad character, disabled from finding any security less afflictive.

37. Of *occasions*, requiring that such security be exacted, examples are the following: —

I. At the charge of a defendant, need of security to a plaintiff, the defendant being on the point of *expatriating* either his person or his property, or both, and the value of what is demanded at his charge bearing a large proportion to his property: at the same time that, supposing the demand groundless, or the security needless, the wrong done to the defendant, if either his person or his property were

detained, might be ruinous to him: as, for instance, the whole of it being on the point of being expatriated on a commercial speculation in a vessel engaged by him for that purpose, and he about to embark for the purpose of superintending the disposal of such his property.

II. On the occasion of the establishment of a mode of *intercourse*, as above, with the judicatory during the continuance of the suit, want of trust-worthiness may produce the need of the exaction of security, at the charge of the individual in question.

III. Whenever, for any purpose, it may be requisite that security be exacted at the charge of a party on either side of the suit, need may also have place for the exaction of a counter-security, at the charge of the party applying for it.

Note here, that of the infinite variety of *occasions*, on which the need of *security-finding* is liable to have place, the practice of *bailing* is but one, and on each occasion the chances of its being the least inconvenient one are as infinity to one.

38. That, in regard to *evidence*, whether the *source* be *personal*, *real*, or *ready written*, no distinction be made between *parties* and *witnesses* who are *not* parties — say *extraneous witnesses*; that is to say, that from both, it be alike receivable and exigible: seeing that so it is in the existing *small-debt courts*, in the aggregate of which more suits have place than in all other courts put together; in regard to exaction, penal suits not excepted: seeing that, in the equity courts, such exaction has place, though, by means of it, the richest proprietor may be divested of the whole of his property; and instances are known, in which, rather than submit to such a loss, men have sustained imprisonment for life.

39. That the mode employed in the elicitation of evidence (under which appellative is included every averment made either by an applicant or by a party on either side) be, in each individual suit, according to the demands of that same suit, in respect of general convenience, one or more of the three modes following: to wit — 1. The *oral*, elicited in the originating judicatory; 2. The *oral*, elicited in another, say a *subsequential* judicatory, to which, for the convenience of a party resident in the territory thereof, the inquiry is, for the purpose of his examination, transferred; 3. The *epistolary*, by means of interrogations approved of by the judge of the originating judicatory.

40. That no response in the epistolary mode be received, otherwise than subject to the eventual examination of the respondent in the *oral* mode, at any time, should demand have place for such examination, in the judgment of the judge.

41. That, instead of being applied, as in equity practice, without necessity, and to the exclusion of the *best*, that is to say the *oral* mode, the *epistolary* mode of eliciting evidence be no otherwise employed than for one or other of two causes: namely — 1. Either for exclusion of preponderant evil in the shape of delay, expense, and vexation; 2. Or of necessity, elicitation in the oral mode being impracticable: as, for instance, where at the time in question the residence of the person addressed is in the one or the other of the sister kingdoms, in a distant dependency, or in the dominions of a foreign state: in all which cases the expense and delay of commissioners sent to the places in question will thus be saved.

42. That, for avoidance of perjury, and abolition of the encouragement given to falsehood, by the distinction between statement upon *oath*, and statement to which, though made without oath, efficiency, equal to that which is given to statement upon oath, is, as above shown, in many cases given, — no oath shall, on any judicial occasion, or for any eventually judicial purpose, be in future administered. But that every statement made on any such occasion, or for any such purpose, shall be termed an *affirmation*, or *asseveration*; and that, for falsehood in respect of it, whether accompanied with evil consciousness, or say *wilfulness*, or with temerity, or say culpable heedlessness, any such punishment purely temporal shall be appointed, as the nature of the case may be deemed to require: consideration in each case had, of the nature of the offence, to the commission of which such falsehood shall have been deemed subservient: and that, as often as, in the course of the suit which gave rise to the falsehood, — all the evidence that can bear upon the question of falsehood has been brought forward, conviction and punishment may have place, even on the spot, without the formality and expense of an additional suit on purpose, just as, at present, in the case of an act, styled an act of *contempt*, committed in the face of the court.

43. That, for rendering substantial justice, and for avoidance of needless multiplicity of suits, statements, and other evidence, relative to the whole of a series of wrongs, be elicitable on the occasion of one and the same application: such satisfaction, in so far as it is in a pecuniary shape, being adjusted to the state of pecuniary circumstances on both sides: this, where it is on one side only, that complaints have place: and that, where there are two parties, between whom, for a greater or less length of time, a quarrel has had place, each, in the way of recrimination, may elicit evidence of divers wrongs, of different sorts, at different times, from the other, in which case, what, on the aggregate, on the score of

compensation, is due from the one, forms a *set-off* to what is due from the other, — satisfaction be accordingly allotted for the balance: as also, on one of the parties, or both, if, in the judgment of the judge, the case requires it, — a fine be imposed for the benefit of the public, on the score of the portion of the time of the judge and his subordinates, which, at the expense of the public, has thus been occupied.

44. That, with the exception of suits in which, by reason of their comparative unimportance, it is purposely left unpreserved, — all evidence, elicited in the *oral* mode, shall, under the care of the *registrar* of the judicatory, be minuted down as it is uttered: and that of this, with the addition of any such evidence as may have been adduced in the *ready-written* form, or elicited in the *epistolary* form, be constituted the main body of the document, which, under the name of the *record*, shall, in case of *appeal*, be transmitted from an immediate to the appellate judicatory: and that, for this purpose, the mode in which the minutations are made, may be that in which, under the name of the *manifold* mode, is already in use, and in which legible *copies*, say rather *exemplars*, to the number of eight or more, are written at once: whereby all danger of error, as between one such exemplar and another, and all expense of the skilled labour requisite for revision, are saved.

45. That, towards defraying the unavoidable costs, in the case of persons unable to defray them, — a fund be established, under the name, for example, of the *Helpless Litigant's Fund*.

46. That all factitious costs being struck off, and unavoidable costs transferred on the revenue, — and professional assistance, in so far as needed, provided gratuitously as above, — *fines*, or say *mulcts*, be imposable on any party in proportion as he is in the wrong; which imposition may have place in a degree of amplitude, far beyond any which, under the existing system, would be endurable, if added to the burthen at present indiscriminately imposed under the name of *costs* on the injurer and the injured: and that of these fines the produce may constitute the basis of the *Helpless Litigant's Fund*: in the case of the wrong-doer, the requisite distinction being all along made, between evil consciousness and rashness, or say culpable heedlessness, not accompanied with evil consciousness: and that, for any incidental misconduct manifested in the course of the suit, such fines be moreover imposable, even on a party who, on the main point, is in the right: so also on an extraneous witness: not forgetting, however, that where the case presents to view a party specially injured, no such fine can with propriety be imposed, unless more be needed on the score of punishment, than is due on the score of compensation: forasmuch as the burthen of compensation produces, as far as it goes, the effect of punishment: the effect — and, commonly, even more than the whole of the effect: forasmuch as, by the consideration that from his pain his adversary is receiving pleasure, will naturally be produced a chagrin, which cannot have place in the case when the profit goes into the public purse.

47. That, as well of the judiciary establishment code, as of the judicial procedure code, the language be throughout such as shall be intelligible to all who have need to understand it: no word employed but what is already in familiar use, except in so far as need has place for a word on purpose: and that, to every such unavoidably-employed word, be attached an exposition, composed altogether of words in familiar use: and that, throughout, the *signs* thus employed be, of themselves, as characteristic as may be of the *things* signified.

Now for the general character of the two opposite systems: that which is in existence, and that which is herein, as above, humbly proposed as a succedaneum to it.

Behold first the existing system:—

Justice, to Judge and Co. a game; Judge and Co. the players: stake, in different proportions, the means of happiness possessed by the aggregate of all litigants.

Established a universal chain of tyrannies: established, by power to every individual to tyrannize over every other, whose circumstances are to a certain degree less affluent: in every case, instrument of tyranny, utter ruin: utter ruin, by the enormity of the expense.

Alike well-adapted to the purpose of the oppressor, that of the depredator, and that of him who is both in one, is this same instrument. This in hand, a man may oppress, he may plunder, the same person at the same time.

Considered with reference to its real ends, could any more accomplished aptitude — considered with reference to its pretended ends — could any more accomplished inaptitude be obtained by a premium directly offered for the production of it?

So much for the existing system. On the other hand, such, as hath been seen in brief outline, is the system of arrangements dictated by a real and exclusive regard for the happiness of the community, in so far as it depends upon the application made of the power of judicature. We invite the well-intentioned, — we challenge the evil-intentioned, — to elicit and hold up to view, all proofs and exemplifications of its inaptitude. Whatsoever alleged imperfections have been

found in it, will of course, in case of adoption, be removed by the constituted authorities. But, considered as a whole, we cannot but flatter ourselves, that, in quality of a subject-matter of adoption after such amendments made, no arguments will be found opposable to it, other than ungrounded assertions, vague generalities, narrow sentimentalities, or customary and already exposed fallacies.

Now for an apology: an apology for the freedom with which the vices of the existing system have been subjected to exposure, and its utter inaptitude for its professed purpose, we trust, demonstrated. In this inaptitude, coupled with the aptitude of the proposed succedaneum, will be found the best, and we humbly hope a sufficient apology for this boldness, how striking soever the contrast it forms with accustomed usage.

Another apology we have to make is, that which is so undeniably requisite for the freedom with which, in addition to the character of the system, that of the class of persons concerned in the administration of it is held up to view. For this liberty, our plea is that of indispensable necessity. For, unhappily, the state of manners considered, — on their part, at any rate on the part of the great majority, it is not in the nature of man that this or any other system should be received by this class, otherwise than with opposition, and that opposition hostile and strenuous in proportion to the serviceableness in the thus exposed system, and the disserviceableness of the here proposed system, to their respective real or supposed particular interests: on which occasion, what again is but too natural is, that, beholding with serenity, and even delight, the torments out of which, and in proportion to which, their comforts are extracted by it, the unction of their panegyrics will continue to be poured forth upon the thus exposed system, in proportion to its need of them, which is as much as to say, in exact proportion to its mischievousness.

Thence it is, that the doing what depended upon us, towards lowering, as far as consistently with justice may be, the estimation in which their authority is held by public opinion, — became, how painful soever, an indispensable part of this our arduous enterprise: — assured as we could not but be, of its finding that so influential authority in its whole force, with all its weight, on every point, pressing down upon it.

Of an imputation which will of course be cast upon the line of argument thus taken by us, we are fully aware. This is — that the weakening the force and efficiency of the whole power of the law is a natural effect — not to say the object — of these our humble endeavours.

To this charge we have two answers: —

One is — that, from this cause, no such consequence will really follow: the other is — that while, by this same cause, the power of the law will not be diminished, the security for its taking its proper direction will be increased,

First, as to the apprehension of the evil consequence. Produced by a superficial glance, natural enough this apprehension must be acknowledged to be: by a closer view, it will, we trust, be dispelled.

That which produces the effect aimed at by the law — what is it? Is it anything other than the expectation, that, on contravention, the inflictions at the disposal of the functionaries in question will accordingly be applied to the contraveners? But of any such infliction, when the decree for it has passed, will the application depend upon public opinion? No, surely: on no such fluctuating basis does public security rest: the persons on whom it depends for its efficiency are, in the first instance, the judges themselves; in the next place, in case of need, the supreme authority, with the whole force of the country in its hands. When a judgment has been pronounced, is it in the power of this or that individual or individuals, in any number whatsoever, to prevent the execution of it? No, assuredly.

Now, as to the desirable good consequence. This consists in the giving strength to the limitative check, applied to the power of the judge, by the power of *public opinion* — sole source from which, on the several individual occasions, this so necessary and from all other hands unobtainable service can be received. Yes; we repeat it — sole source. True it is, that, in theory, and by the practice of times now past, *impeachment* is presented in the character of an appropriate remedy: hands by which it is applicable, those of the Honourable House. But, in fact, only in appearance is it so. On no other condition than that of leaving — and that to an indefinite degree — inadequately done, or even altogether undone, its superior and altogether indispensably *legislative* duty, — could be undertaken by the House, this judicial, and, as such, inferior and comparatively unimportant function. Witness the testimony so amply afforded by experience: witness the Warren Hastings impeachment: witness the Melville impeachment. Take away the check applied by the tribunal of public opinion — here then is the power of the judge, nominally and theoretically controuled, really and practically uncontrouled: and of this same uncontrouled power, what sort of use has been made, and, so long as it continues upon its present footing, cannot but continue to be made, has, we humbly trust, been sufficiently seen already.

Well then: of the power of public opinion in consequence of the information hereby afforded to it, what is the application reason-

ably to be expected? The universal power of the whole country — will it employ itself against itself? But, the lower the trustworthiness of these same functionaries is in the scale of public opinion, the less efficient, on each occasion, will be capable of being made its resistance to this indispensable check: — the only one, as hath been seen, from which any controul can be experienced by it.

Undangerous in perfection, gentle in perfection, continually improving, self-improving, — what other power can be so completely incapable of being abused as this? Only by the check applied by it can the efficiency of a judge's sinister leanings be lessened: only by the force of reason can the direction taken by this guardian power be determined.

As to any such fall as that just mentioned, — whatsoever may be the sensation produced by it, — in their predecessors and themselves, these functionaries may behold the original authors whom they have to thank for it. Instead of being what it has ever been, and continues to be, and never can but be, — had the use made of their power been the direct reverse of what it has been, — no such state of the public mind, — no such sensation in the individual mind, could have had place.

While speaking of this same downfal, it is not without unfeigned regret that we can contemplate the hurt, which, by this our humble petition, cannot but in a greater or less degree be done to the interests and feelings of individuals: and this, not only eventually by the establishment of the here proposed system, but actually and immediately by the picture here drawn of the causes by which the demand for it has been produced.

But, well-grounded as these their apologies cannot be denied to be, no reason will they afford why the exertion necessary to the putting an end to the abuses apologized for should in any way be slackened. The surgeon, with whatsoever concern he may behold the sufferings of the patient under the necessary caustic, cannot hold himself exempted by the consideration of them from the obligation of putting it to its use.

Nor yet under these regrets, for this hardship on individuals, is alleviation, independently of that afforded by the contemplation of the all-comprehensive benefit to the public, altogether wanting.

Classes, the interests of which would be affected by the proposed reform, these two: — the professional and the official.

As to the professional class, not to near so great an amount, if to any, as at first view might be supposed, would be the detriment to their pecuniary interests. For, long would it be before their situation could be in any way affected by the change. Suppose the matter already before a committee of your Honourable House: long would it be, before the reforming process would, by a bill brought in in consequence, so much as take its commencement: long, beyond calculation, notwithstanding the utmost possible exertions employed in giving acceleration to it, would be the time occupied in the continuance of that same process: long, even supposing both Houses unanimous in their approbation of the measure considered in a general point of view: and how much further could it fail of being lengthened, by the exertions which it would be so sure of finding everywhere opposed to it — opposed by the best exercised and strongest hands? Such is the length of time during which all such professional men as the bill found already in possession of business would be enjoying the fruits of it, without diminution or disturbance.

So much for that class. All this while, all men who, but for the apprehended fall off, would have engaged in the profession, will have had before their eyes the prospect of it, and the notice and warning given by that prospect. On the other hand, in like manner, will these same eyes have had before them the augmentation (and it has been seen how ample a one) given to the number and value of the aggregate lists of judicial situations. Correspondent will accordingly be the number of those whose destination will, by that prospect, be changed from the indiscriminate defence of right and wrong, in the capacity of professional lawyers, to the pure pursuit of the ends of justice, in the situation of judge. Moreover, proportioned to the amount of this secession would be a further indemnification to those already in the possession of business: so many men whose course has thus been changed, so many competitors removed.

The class upon which, chiefly, the loss would fall, is the *attorney* class. A certain class of suits there is by which, on the present footing, business with its emolument is afforded to the attorney, none to the advocate class: business, for example, begun, altogether without prospect of successful defence, and thence carried through actually without defence: action, for example, with or without arrest for indisputable and certainly procurable debt. Barristers not deriving any profit from the present existence, would sustain no loss from the cessation of these actions.

But as to the length of the interval before commencement, as also the exclusion put upon competition, — in these advantages the attorney class would possess an equal share.

As to the official class, nothing whatever in a pecuniary shape can any of its members have to apprehend from the change: from all such apprehension they stand effectually secured by the application so constantly made of the *indemnification* principle, to the interest of men of their order at any rate, whatsoever ground of complaint, on this score, may, in

but too many instances, have been felt by functionaries belonging to lower orders.

After all, of all regrets from such a source the complexion would be, what it would be if the sufferings, instead of these, were those of medical men from improvements made in the state of general health and longevity: improvement such as that made by the substitute of vaccination to inoculation: imaginable improvement by discovery made of a never-failing specific, for example, against the ague, the rheumatism, the gout, the stone, the cholera morbus, the yellow fever, the plague, or by the universal drainage of all pestiferous marshes.

Now, as to the effect producible on estimation, and thence on feelings. Altogether unavoidable, and indispensably necessary to the establishment of the everlasting good, upon the all-comprehensive scale on which it is here endeavoured at, — has been the production of the transient evil upon this comparatively minute scale. Before the running sore, kept up at present under and by the existing system, could with any the least chance of success be endeavoured to be healed, it was necessary it should be probed, and the sinister interest in which it has had its cause, brought to light and held up to view.

Now, in the case of the class of persons unavoidably wounded, so far as regards damage to estimation, are alleviations, and those very efficient ones, by any means wanting? In the first place, comes the consideration, that what is important to them, so far from being peculiar to them, is nothing more than what has place incontestably and confessedly in all other classes of men whatsoever. In the minds of the men here in question, indeed, but no otherwise than in those of all other men, with the exception of the heroic few, prevalence of self-regard over all other regards, and this on every occasion, is among the conditions of existence. Place all regard for the interest of A in the breast — not of A but of B, and so reciprocally, the species cannot continue in existence for a fortnight. True it is, that in this or that heroic breast, on this or that occasion, under the stimulus of some extraordinary excitement, social feeling, upon the scale of such an all-embracing scale, may, here and there, be seen to tower above regard for self: but to no man can the not being a hero be matter of very severe reproach. When, therefore, as here, interest from the very first — interest real, or (what comes to the same thing) imagined—has been made to clash with duty, sacrifice of duty is, with exceptions too rare to warrant any influence on practice, sure, and as such ought to be calculated upon, and taken for the ground of arrangement and proceeding, in all political arrangements.

Men are the creatures of circumstances. Placed in the same circumstances, which of us all who thus complain, can take upon himself to say or stand assured — that, in the same circumstances, his conduct would have been other and better than that which, on such irrefragable grounds, he is thus passing condemnation on, and complaining of?

Of the existing race, whatsoever may be the demerits, they have at once, for their cause and their apology, not only the opposition in which, in their instance, interest has been placed with reference to duty, but the example set them in a line of so many centuries in length, by their predecessors; and in ancestor worship, how this our country has at all times vied with *China*, is no secret to any one.

The concluding observation, how small soever may be the number of the individuals to whom it will be found to have application, is — that, to the imputation of hostility to the universal interest, by perseverance in the preference given to personal interest, it depends upon every man to remain subject, or liberate himself from it, as he feels inclined: and the more powerful the temptation, the more transcendent will be the glory of having surmounted it: and whatsoever may have been the strenuousness and length of his labours in the augmentation of the disease, ample may be the compensation and atonement made, by his contributions to the cure of it.

Such are the considerations, from the aggregate of which our regrets for the manner in which the feelings of the individuals in question cannot but be affected, have experienced the diminution above spoken of. But were those regrets ever so poignant, our endeavours for the removal of the boundless evil of the disorder would not be (for, will anybody say they ought to be?) in the smallest degree diminished, by the consideration of the partial evil thus attendant on the application of the sole possible remedy: assuredly ours will not; nor will, as we hope and believe, the accordant endeavours of the great majority of our fellow-subjects.

On this occasion, a circumstance to which we cannot but intreat the attention of the Honourable House, is the uniform and almost universal silence, in which, by professional men, in bringing to view, or speaking of proposed reforms or meliorations, this universal cause of all the wrongs and sufferings produced in the field of law, has, as if by universal agreement entered into for the purpose, been, as far as depended upon them, kept out of sight. Of the several elements of appropriate aptitude, as applied to this case, — intellectual aptitude and active talent are, on this occasion, assumed to be the only ones, in which any deficiency in the appropriate aptitude of the law itself in any part, has ever had its source: the only ones on which the degree of this same aptitude depends: the only ones,

of a deficiency in which there can ever be any danger. As to appropriate moral aptitude,—on every such occasion, exclusively intent on the interest of the public, without so much as a thought about their own interest, in any respect, and in respect of profit in particular,—that all persons in this department sharing in the possession of power, and with them all persons engaged in the exercise of the profession, are, and at all times will be,—this is what is tacitly, but not the less decidedly, assumed: assumed? and with what reason? With exactly the same as if the assumption were applied to all persons engaged in trade. Now then, in this state of things, while on every occasion universally thus referred to the wrong cause, what can be more impossible, than that the disorder should ever receive from the sole true *recipe*, deduced from the knowledge of its true cause, its only possible remedy? Vain, however, how extensive soever,—vain at any rate, so far as regards us your petitioners,—will henceforward be this so decorous and prudential silence, the nature and magnitude of the mischief, and the nature of its cause, being at length alike known to us.

As to this silence, the decorum attached to it notwithstanding, we humbly trust that in the Honourable House it will not any longer be maintained: for so long as in that sole source of appropriate relief it has continuance, so long will all possibility of effectual remedy be excluded; and so long as the disorder continues unremoved, by no silence anywhere else can our ears be closed, or our tongues or our pens be stopt.

Yes; as to us your petitioners, the film is now off our eyes: thus wide open are they to the disorders of which we complain, and to the urgency of the demand for the remedy, of which, at the hands of the physicians of the body politic, we thus humbly, but not the less earnestly, entreat the application.

To some it may be matter of no small wonder, how such sufferings, as at all times have been experienced, should at all times have had for their accompaniment, such almost universal patience. But, in this case, patience has been the natural fruit of ignorance; the language in which these torments of the people have in this case had their instrument, being about as intelligible to the people at large, as is the gibberish spoken by the race of gypsies.

We beseech the Honourable House to ask itself whether, of the enormities above brought to view, one tenth would not suffice to justify the practical conclusion here drawn from them?—whether, of a system thus in every part repugnant to the ends of justice, and injecting into every breast, with such rarely-resistible force, the poison of immorality in so many shapes, the mischief can be removed otherwise than by the entire abolition of it, coupled with the substitution of a system directed to those ends, and pure from all such corruptive tendency?—whether the inaccessibility of justice be not of the number of those enormities?—and whether the House itself will, henceforward, be anything better than an enemy to the community, if with eyes open, and hands motionless, it suffers that inaccessibility to continue?

For our parts—respectfully, but not the less earnestly, we conclude, as we began, with the continual, and, till accomplishment, never-about-to-cease cry—"Holy! Holy! Holy! Justice! accessible Justice! Justice, not for the few, but for all! No longer *nominal*, but at length *real*, justice!"

ABRIDGED PETITION FOR JUSTICE.

To the Honourable the House of Commons in Parliament assembled.

1. JUSTICE! justice! *accessible* justice! justice, not for the *few* alone, but for *all!* No longer *nominal*, but at length *real*, justice!—In these few words stand expressed the sum and substance of the humble Petition, which we, the undersigned, in behalf of ourselves and all other his Majesty's long-suffering subjects, now at length have become emboldened to address to the Honourable House. The case we accordingly take the liberty to state, followed by a prayer, humbly suggesting a plan for the removal of the grievance, is this:—

2. That, of the *expense*, without which, application to judges, for the *service* which, as such, they are appointed to render, cannot be made, nor if made continued, the effect is such—that, in cases called *civil* altogether, and in cases called *penal* to a vast extent, justice is not only sold at a dear price to all the few who have wherewithal to purchase it, but utterly denied to all who cannot; and that those who are thus oppressed are thus subjected to wrong, in all shapes, without redress.

3. That the *delay* is such, that, in many cases, in which, under a proper system, a few minutes would suffice,—and even under the system established does in cases to a narrow extent actually suffice—more than as many years elapse before a man can obtain posses-

sion of what, at the end of that interval, are universally seen to have been, and to continue to be, his manifest and indubitable rights.

4. That, while thus unapt for *redress* of wrong, it is exquisitely well adapted for the *commission* of wrong: for, such is the mode in which commencement is given to suits, that is to say, without security given for compensation for wrong if done by means of the suit, that, without so much as imagining himself to have any just ground of demand whatsoever — any man, who is able and willing to pay a certain price, may, as we shall show, stand assured of effecting the utter ruin of any one of nine-tenths or ninety-nine hundredths of the whole body of the people.

5. That this state of things has for its *cause* the undeniable fact, — that, from first to last, the interests of all persons concerned in the administration of justice have been in a state of opposition, as direct as possible, to their acknowledged duty, and the interests of the community.

6. That this opposiiteness had for its original cause the *penury* under which government at that time laboured; it not having, in its then existing state, wherewithal to pay salaries; and being thereby laid under the necessity of allowing the functionaries of justice to exact, for their own use, payment in the shape of *fees*: payable for processes carried on in the course of the suit: for processes carried on, — that is to say, either for instruments *(written instruments)* communicated, or thereby or otherwise, *operations* performed.

7. That, under and by the influence of the sinister interest thus created — has been generated the existing system of judicial procedure: a procedure, having for its ends — instead of the ends of justice — the swelling, to its utmost endurable amount, the evil composed of the expense, delay, and vexation, for the sake of the profit extractible out of the expense, to the use of the several partners in the said sinister interest: to whom, taken in the aggregate, may accordingly, without injurious misrepresentation, and with instructive and beneficial application to practice, the style and title of Judge and Co. be allotted.

8. That though, by a late act, in the case of the judges of the supreme Westminster-hall courts, salaries have been substituted to fees, — yet, this substitution, not being extended to those their subordinates, of whose situations they have the patronage, the comparative *sinister interest*, in unabated efficiency, still *continues*: *gift* being still allowed; and gift being, in all cases, a source of proportionable benefit to the giver; in some cases of even greater pecuniary profit than *sale* is: as in the case of the gift made of the next presentation to an ecclesiastical benefice, by the patron to his son: and that, even were this same supposed remedy effective against further increase of the grievance — which, however, it is not in its nature to be — still the system of factitious expense, delay, and vexation, offspring of the sinister interest, would remain as it does in all its mischievousness.

9. That the boundless weight of human suffering thus imposed is not, in any part of it, as some suppose, natural and unavoidable, but in the whole artificial: as also in the whole removable; as, in and by the suggestion contained in the prayer of this our humble petition, we will humbly show.

10. That, amongst others of the *devices* which, in consequence, and by means, of the Norman conquest, have been contrived and employed, for the compassing of this same sinister object, the results are these which follow: — devices, some of them first employed at and during that same period, others at different successive periods, grafted on, or employed in fertilising, the first devised radical ones.

11. — I. *Device the First — Exclusion of the Parties from the presence of the Judge.*

This at the very outset of the cause, down to the last stage: that thereby, parties in general, and the most opulent in particular, may be, as they accordingly are, necessitated to employ in all, even the most simple cases, as substitutes, a class of men whose profit rises in proportion to expense, delay, and vexation; and who, exercising their profession under the dominion of the sinister interest, which they have in common with that of the judges, have the benefit of their support towards the reaping and increase of this same sinister profit: a master device this, serving as a necessary instrument of the employment given to most of the hereinafter ensuing devices.

12. A collateral mischief is — that, by this exclusion, the door is shut against evidence from that which is commonly the most instructive source, and thereby decision necessarily given in favour of the side in the wrong, in every case in which no other than the thus excluded evidence is obtainable. This in some cases: while, in other cases, by a glaring inconsistency, the thus excluded evidence is admitted.

13. In particular, in the judicatories called *equity courts*, in which the plaintiff is admitted, in and by his bill, to extract evidence, through the medium of the pen, from the bosom of the defendant: in which state of things, the defendant, — unless his professional assistants are deficient in appropriate aptitude — moral, intellectual, or active, — slides in, in and by his answer, whatsoever averments present, in

his and their joint opinion, a probability of operating in favour of his side.

14. Not but that, for two distinct purposes, — in so far as may be without *preponderant evil* in the shape of delay, vexation, and expense, is necessary to justice the thus excluded attendance: — 1. For bringing to view all facts which are of a nature to operate in favour of any party on either side; 2. To serve as a check upon the sinister interest, whereby their respective professional assistants are prompted, as above, to swell to its maximum that same *evil*, for the sake of the profit extractible out of the expense.

15. Note also that, so far as it can be effected without preponderant evil as above, not less needful is this attendance on the part of *principals*, or say intended *benefitees*, (for example, wives, children and their offspring, wards, and members of associated companies,) for the protection of their interests, against misconduct on the part of their respective *trustees:* that is to say, husbands, fathers, and other progenitors, guardians, and agents of various denominations; with or without collusion with their several professional assistants in the suit.

16. — II. *Device the Second — Language unintelligibilized.*

Instead of the mother-tongue of the parties, the language, originally employed in word-of-mouth discussion, being the language of the conquerors; that is to say, *Norman French:* and the language, employed in written instruments, the *Latin*.

17. Thence was created the necessity of employing these so little trustworthy trustees, not only as assistants and advocates, but even as interpreters between the *English-speaking* parties and the *French-speaking judges*.

18. Out of these two foreign languages, in conjunction with the mother-tongue, has been made up the jargon, by which, to so great a degree, the same continuance has been given to the same design; — the translation, at length made by order of parliament, notwithstanding: whereby, to so great an extent, false and delusive lights have been substituted to total darkness.

19. — III. *Device the Third — Written Pleadings worse than useless, necessitated.*

By this means, justice was *denied* to all who could not afford the expense of hiring the manufacturers of this sort of ware — sold to all who could and would be at the expense: and, even now, such continues to be the case: and, being paid in proportion to the quantity, thus it is, that, by this sinister interest, they stand engaged to give every practicable increase to it.

20. Now then, as to the supposed necessariness and usefulness of these same instruments. Really necessary are, and in every case, on the plaintiff's side, — statements; — 1. Of the *demand* made by him; 2. Of the *ground* of it in point of *law;* 3. Of the ground of it in point of *fact;* 4. Of the evidence by which it is supported; 5. Of the *persons* on whom the demand is made. These are — 1. In the first instance, as above — the *defendant;* 2. On failure of compliance on his part, by performance of service demanded at his hands — the judge; the service demanded at his hands then, the correspondent service, rendered by bringing about that which was demanded at the charge of the defendant, or what is regarded as an equivalent to it. In like manner, in case of non-compliance on the part of the defendant, correspondent statements in justification of such non-compliance.

21. Of all this matter, what is there in these same written pleadings? Answer — Really and distinctly expressed, nothing: nothing but a confused and redundant, yet imperfect hodge-podge, composed of more or less of it.

22. Moreover, for procuring custom, at the hands of individuals who know they are in the wrong, — as well as for giving increase to the quantity of jargon which parties are constrained to buy, — a distinction has been made between *pleadings* and *evidence;* and this in such sort, that while, on the one hand, of statements to which the name of *evidence* is given, *punishment*, under the name of *punishment*, is, in case of wilful falsehood, made the consequence, — on the other hand, to those to which the name of *pleadings* is given, no such consequence is attached: and thus it is, that, to all such left-purposely-unpunished falsehood, allowance, or say licence, is given: at the same time, to these same masses of falsehood, which are not so much as pretended to be entitled to the name of evidence, is given a surer effect than to any the best and most satisfactory evidence: since, when the party on either side has come out with one of these pleadings, the party on the other side, if he fails to encounter it with a correspondent mass, is *visited* with the loss of his cause: and thereby with a suffering, which may be any number of times as great as that produced by punishment under the *name* of *punishment* would be: and thus it is, that the licence so given to mendacity operates as encouragement to, and reward for, the commission of it.

Now then, this same failure, when it takes place — what has it for its efficient cause? His being in the wrong, and at the same time conscious of being so, answer Judge and Co.: if both these fail, his inaction is *circumstantial* evidence; and to this we give the effect of *conclusive* evidence.

23. Such is the conclusion: now as to the justness of it. Not to speak of others, — one circumstance which the failure is not less likely to have had for the efficient cause is — want of wherewithal to pay for this same thus necessitated mass of surplusage: and, the greater the quantity of it, the more probable this fulfilment of the dishonest suitor's wishes: and thus it is, that, by continuance given to the length of the mass, any man may make sure of consigning to utter ruin any other man, whose circumstances are to a certain degree less affluent: and, under the name of justice, the faculty of oppression is sold to the best bidder.

24. Addressed to the supporters of the existing system, follow a few plain questions:—

If, in relation to any point, it were on any occasion your wish to learn the truth of a case of any sort from a child of yours, or from a servant of yours —

1. Would you refuse to *see* him?

2. Would you send him to, or keep him at, a *distance* from you?

3. Would you insist on his not answering otherwise than *in writing*?

4. Would you, on the occasion of such his writing, *insist* on his coming out with a multitude of *lies*, some *stale* and notorious, others *new* and out of his own head?

5. Would you so much as *consent* to his mixing up *false* information, in whatever quantity he chose — and *that* in an undistinguishable manner — with whatsoever true information it was that you had need of?

6. Would you establish an interval of four or five months' forced silence, between statement and statement, question and answer, or one answer and another?

7. Would you take any such course, if you were acting as *chairman of a House of Commons committee*, making inquiry into the state of things in relation to any subject, for the information of the *legislature*?

8. Would you, if acting in the character of a *justice of peace*, whether singly, or as chairman, at a meeting of a number of justices of the peace, sitting in special sessions, and making inquiry into the matter of a question of any sort, civil or penal, coming within your competence?

25. Well, then: this, however, is, all of it, the exact description of what has place, as often as the process of delivering *written pleadings* is carried on; carried on, as it is, under the eye and by order of all the judges: and this, as well in the equity courts as in the common-law courts. This is what, in the common-law courts (to go no higher,) has place from beginning to end; has place until the suit reaches the jury-box: — not to go along with it any further.

26. Now, then, on the part of those by whom this was the course in which judicial inquiry was ordained to be carried on, can you, now that that course is thus laid open to you, — can you for a moment suppose that *justice* was ever the end in view? Can any man of common sense suppose it? Can any man of common honesty declare himself to suppose it? Can it really be believed by any man, that dispatch is promoted by an inexorably *standing still* for four or five months?

27. IV. *Device the Fourth — Mendacity licensed, rewarded, compelled, and by Judge himself practised.*

Of the manner in which, by and for the benefit and profit of Judge and Co., falsehood has begun and continues to be *licensed*, *rewarded*, and on some occasions *compelled*, it has been necessary to give some intimation under the head of *written pleadings*; falsehood, wilful or not, as it may happen, on the part of the *utterers*, wilful at any rate on the part of the judges — the *suborners*. Follow, under the present head, instances of *compulsion* more manifest and avowed, as also of the *practice* of it by themselves.

28. First, as to *compulsion*. In the proceedings of the courts styled *courts of equity*, in contradistinction to courts of *common law*, it is — that features of *compulsion* are in a more particular degree prominent. After the process which has the effect of a *summons* — the instrument, with which the suit begins, is a paper called *a bill*, commencing with a *case*, or say a *story*, and continuing with a quantity of *interrogative matter*, by which *answers* are called for: answers, to a string of *questions*, grounded on the several *statements*, or say *averments* or *allegations*, contained in the case. To these averments is given, on this occasion, the name of *charges*.

29. Now then, of this same *case*, — what is the composition? Falsehoods, in a more or less considerable proportion, it cannot but have; and in the larger proportion it commonly has. Penalty, on non-insertion of them, refusal to impose on the defendant the obligation of giving answers to the question; in which case, they will not be of any service to the plaintiff's purpose; they will not be contributory to his obtainment of his right: the evidence sought for by them at the hands of the defendant remains unelicited.

30. Seat and source of the falsehood, this: Into the composition of the *case* or *story*, enter commonly two distinguishable *parcels* of alleged facts, all supposed to be *relevant* to the matter in question, and *necessary*, or at any rate *conducive* to the purpose of constituting an adequate ground for the demand made at the charge of the defendant, by this same instrument of demand: object of it, a *service* in some shape or other, at the hands, and at the charge, of the defendant; and,

eventually, in default of compliance on the part of the defendant, the correspondent service at the hands of the judge; namely, the production of such compliance, or some other service regarded as an equivalent for it.

31. Contents of one parcel of these same facts, such of them as, without any information from the defendant, are (so the plaintiff conceives) known to him (the plaintiff,) as also to some other person or persons, regarded by him as having had perception of them, and being able and about to be willing to declare them: or, at any rate, as being in some way or other in his power to make proof of: this, in whatever degree of *particularity* is necessary to constitute the requisite ground: — call these the *already known* facts. As to this parcel, all that is wanted at the hands of the defendant, is *admission*: seeing that by this, the need of application to any other person for the purpose of *information*, will of course be superseded.

32. Contents of the other parcel, such supposed facts as, in contradistinction to the foregoing, may be styled *unknown* or *sought-for facts*; sought, to wit, at the hands of the defendant: the case being, that, for making proof of them, *information*, such as it is in his power to afford, and perhaps in his alone, is regarded as requisite: in relation to these facts, all that, in the plaintiff's mind, in a form more or less particular and determinate, has place, being a *conjecture*, or say *suspicion*, of their existence.

33. Now then, as to these same *sought-for facts*,—for what reason is it that by the plaintiff they are thus *sought* for? *Answer* — For this very reason, because they are *not* known to him. Yet, in relation to the facts thus unknown to him, is he obliged to make declaration that they *are* known to him: which declaration is constantly the offspring of the inventive genius of his professional advisers and assistants. Without such false declaration from them — writing in the plaintiff's name, — no information at all will the learned judge suffer to be attempted to be elicited from a defendant. Purport of the rule expressive of the obligation, this: — Every interrogatory must have a *charge* for the support of it.

34. Plaintiff, for example, creditor of a person deceased; defendant his executor. To some amount or other, property in some shape or other, is left by the deceased: but, to what amount, and in what shape, this is what the plaintiff is altogether ignorant of; for information in relation to it — information in such shape as shall constitute an adequate ground for the demand made of the debt—this is what is thus *sought for* by plaintiff, at the charge and at the hands of the defendant. Well then: to a question, asking whether property of the deceased to the amount requisite is in existence, and if yes, what it consists of, and so forth, will a judge compel any answer to be made? Not he indeed: otherwise than *upon condition*. And this condition, — what is it? *Answer* — That, in the bill, a multitude of declarations, or say *averments*, *assertions*, or *statements*, shall be inserted — statements, giving an account more or less particular, of the several above-mentioned *unknown* facts: facts, by the supposition unknown to the very individual, who is thus compelled to assert that he knows them; on which occasion, the learned draughtsman finds himself under the not altogether unpleasant or unprofitable obligation, of bringing to the view of his lordship (who will never see it) a statement of every sort of thing, which it is regarded as possible should in the aggregate mass of the property in question have been contained; and, the richer the quantity of this poetry in prose, the richer the reward to the industry of the firm of Judge & Co. in all its branches.

35. Note, by-the-bye, in the case where no *information* is wanted at the hands of the defendant, the *consequence* of resorting to him, in *this* mode, for *admission*, instead of to a non-party — say an extraneous witness — for information, and thereby for proof. Consequence naturally expected (that is to say, by a man who has never looked into equity procedure) delay and expense saved: for, to the defendant, application (says he) must be made at any rate for payment of the debt. This (continues he) being necessary, when you are about it, add to the demand of the money due, a demand of the information necessary to the proof of its being due: — the information being thus obtained, and from the defendant himself, saved thereby is the delay and expense of the endeavour to obtain it from sources in number and distance altogether indefinite. Such, as to delay and expense, is the economy in appearance. How stands it in reality? *Answer* — In *natural* procedure it would have place; but in equity procedure, what the plaintiff gets by it, if the defendant (being rich enough) so pleases, is — in regard to delay, substitution of years to minutes, and in regard to expense, hundreds or thousands of pounds to shillings.

Is this handwriting yours? Yes, or no? For the answer to a question to this effect, *spoken* by a justice of the peace, less than even a *second* of time would serve; and by an answer in the affirmative would be decided many a suit which, under equity procedure, while questions and answers are *written*, occupies *years*.

36. So much for *licence*, *remuneration*, and *compulsion* of mendacity. Now for the practice of it: practisers, as well as compellers of mendacity — never, for a moment, let it be out of mind, — the judges themselves. *Fiction* is the appellative, by which the sort

of falsehood, thus by judges coined in their own mint, has at all times been distinguished. Nor was the choice thus made of the appellative a *blind* one. Established they found it in a situation of favour in the public mind, — established by means of the application made of it to the purpose of designating *poetry* and *romance:* and thus it was, that, into a portion of the favour, associating with those always agreeable and sometimes useful productions of the imaginative faculty, they thus contrived to let in these constantly not only useless, but enormously mischievous ones. So much for the nature of this species of poetry.

37. Now for some accompaniments belonging to it. In every case, of the utterance given to these falsehoods, *evil consciousness*, — styled in their language *mala fides*, — has on their part been an accompaniment: *fraudulent obtainment*, the *object:* subject-matter of the obtainment, money: to wit, either immediately, that is to say, in the shape of *fees*, or mediately, through the medium of power, parent of fees: *persons thus wronged* — in so far as the subject-matter was composed of *money* — the people, in the capacity of *suitors:* in so far as it was composed of *power*, the fellows and competitors of these same judges; as also, in various indirect ways, the *people* again: one way — the being, in the course of the scramble between judge and judge, consigned to imprisonment; and through imprisonment, frequently to utter ruin, as, under the head of *groundless arrests* for debt, will be found distinctly visible. So much for the *morality* of the *practice*.

38. Now as to the *effects* of it. Beneficial effects, none: mischievous effects, these:—

I. Mischief the first and most prominent: depredation and oppression, as above: on each individual occasion, at the charge of *assignable* individuals in the capacity of *suitors*.

39. — II. Mischief the second: *arbitrary power* acquired and exercised. Allow a man to assume the existence of a matter of fact, — of an event, or state of things, by which, supposing it really to have had existence, the assumption and exercise of power would have a justificative cause, — allow him this, what is the power which you do not thus allow him to assume? Of this indirect mode of assumption in preference to the direct, what is the consequence — any diminution of the evil? No: but, on the contrary, an addition to it; namely, the evils produced, as will be seen, by the nature of the *instrument* thus employed.

40. — III. Mischief the third: birth given to a particular instrument of arbitrary power: an instrument to which exposition and exposure have been given elsewhere, under and by the name of the *double fountain*. Mechanism thus alluded to, a vessel invented by *jugglers;* contained in it, wine of two sorts and colours; out of it, come the one or the other at the word of command. Whenever any one of these fictions has been established, thus is it with truth and falsehood. On the individual occasion in question, to this or that sinister purpose of the judge, which of the two is it that is most suitable? Is it the falsehood? Out comes, as usual, the established falsehood, and on this it is that the proceedings are grounded. Is it the truth? Back goes he to the original truth; and on this are the proceedings grounded now. Consequence to juggler's reputation, what? At the hands of the people, anything in the way of censure? Oh no: they look on and stare. Instead of censure, comes in either case praise: on this occasion, as on every other, praise at the hands of Judge and Co. and their dupes, — praise without stint, for everything, be it what it may, which by these same hands is done. Whichever be the ground taken by the decision, praise, appropriate in shape and quantity, stands prepared for the reception of it. Is it the falsehood? Topic of eulogy, strictness of the regard manifested for *established* rules: for the precept expressed by the words *stare decisis*. Is it the truth? Topic — liberality and paramount love of truth and substantial justice: who shall blame the holy love of substantial justice? Of the *double fountain*, one form this: under the head of "*Decision on grounds foreign to the merits*," will be visible another.

41. Thus it is, that, on each occasion, according as it happens to him to feel disposed, disposed by whatsoever motives — whether by corrupt profit to himself, by sympathy or antipathy towards individuals or parties — the judge has it in his power to determine the suit in favour of the one side or the other: and this without any the smallest danger, either of punishment at the hands of government, or so much as censure at the hands of public opinion.

42. — IV. Mischief the fourth. In the minds of well intentioned judges, generated by the incongruous mixture, confusion, thence relative intellectual inaptitude — one efficient cause of misdecision, on the part of the judge, delay in the proceedings, with expense and vexation at the charge of suitors.

43. — V. Mischief the fifth. Of that part of the rule of action, which continues in the aerial shape of *common*, in contradistinction to *statute* law, — the texture vitiated, and the all-persuading and incurable inaptitude increased; and this as well in the *substantive* as in the adjective branch of the law: it being through the machinery of the *adjective* branch, or say the system of *procedure*, that the cobwebs, of which the substantive branch or *main body* of the law, in so far as manufactured by judicial hands, is composed: and thus it is, that, in the minds of the manufacturers, the

confusion and intellectual inaptitude, and in the work the consequential inaptitude, extends itself over the whole fabric: which by this means is manufactured into an opaque mass, into which the most learned among lawyers have no better than an indistinct insight, and we, the people at large, next to none: at any rate, none such as enables us, of ourselves, to guide our course by it. Witness, in particular, the law of *real property*.

44. — VI. Mischief the sixth. By the example set by a class of persons who, by all these devices, hereinbefore mentioned, and hereinafter mentioned, have hitherto succeeded in rendering themselves objects of almost universal respect and confidence, and by means of those sentiments, in addition to their uncontroulable power, masters of our conduct, the public mind has been, and continues to be, to a deplorable degree, impregnated with the poison of mendacity in this so highly corruptive shape: and thus it is that *demoralization* and *disintellectualization* go hand in hand.

45. — V. *Device the Fifth — Oaths for the Establishment of the Mendacity, necessitated.*

As intimated on the occasion of the *written pleadings device*, mode in which the ceremony of an oath has there been employed as an instrument of mendacity, and, as will be seen, maleficence in so many other shapes, the following: — To assertions, on the occasion of which the ceremony is employed, the distinctive appellation of *evidence* is applied, and to wilful falsehood contained in such assertion, punishment is attached: while, to falsehood, the assertion of which is not accompanied with the performance of this same ceremony, no punishment is attached. In mendacity has been seen an instrument by which such enormous increase is given to the evil produced to suitors, thence to the good produced to Judge and Co. by *written pleadings*. In the ceremony of an oath may now be seen an instrument, by the use of which the production of the mendacity is effected.

46. *Purposes* for which this ceremony is employed, two: — 1. Securing veracity at the hands of witnesses; 2. Securing fulfilment of duty at the hands of functionaries, more particularly on the part of *jurymen*. I. *Mischievous*, in both instances, we trust it will, on examination be seen to be; thus efficient to evil purposes; 2. *inefficient*; and 3. *needless* to all good purposes, in both cases.

47. — I. First, as to its application to *testimony*, and on that occasion, as to its mischievousness: 1. Abundantly sufficient to warrant and necessitate abolition would surely be its above-mentioned property of producing mendacity, were it the only one.

48. — 2. But to this is added another, of most appalling magnitude. Yes: the giving impunity to crime in every shape, the most obvious not excepted. In the hands of every man, — the most worthless and mischievous not excepted, — does it place the power of producing this effect: thus sharing with the sovereign the prerogative of *pardon*. Called into the witness-box, *conscience* (he declares) will not suffer him to bear a part in the ceremony. Not unfrequently have instances of such refusal made their appearance: none, in which punishment, in any shape, has been attached it: the insincerity, howsoever real, not being manifest nor proveable, punishment for the refusal would be *persecution*; and *that* persecution, happily, too odious to be endurable.

49. Without the ceremony, for this long time, in *civil* cases, now of late in criminal cases, admission has been given to the testimony of *Quakers* and *Moravians*. "*I am a Quaker*," or "*I am a Moravian*," (suppose) is in purport the averment made by the person thus called upon: — this said, who shall gainsay it?

50. Suppose even punishment applied, how would the matter be mended? Applied it could not be, till after the impunity had been effected.

51. Moreover, even were the infliction sure, it might be made worth a man's while to undergo it.

52. So, in any case called a *civil* case, may he in like manner give or sell success to either side.

53. Murderous robbers might thus go on in impunity for any length of time, in the commission of the crime. In the number regarded as requisite they join in it; a reward, a high amount with pardon, as usual, being offered to any one of them for information, some of them — one or more, proffering testimony against the rest: trial coming on, they declare themselves atheists; whereupon they refuse to bear a part in the ceremony: true it is, that in this case conviction not taking place, pardon is not earned; nor need it, for no testimony being delivered, acquittal follows of course: acquittal on the part of the prisoners, for no evidence is there against them: on the part of the informer, for no evidence is there against him. But (says somebody) by simple and direct refusal to swear, unaccompanied with any such declaration of opinion, will not the same effect be produced? and is it not produced accordingly? Natural enough this question: but to find an answer to it, belongs not to the present purpose.

54. Yes, atheists; of Quakerism or Moravianism, declaration can no longer serve; but *atheism* remains as good as ever: power of pardon, a share in the king's prerogative, remains the reward for it.

55. — II. Secondly, as to its inefficiency, still as applied to testimony: — To a mode of punishment, which might, in an almost unexampled degree, be efficacious, it substitutes a mode in an extraordinary degree inefficacious. Of contempt of court, when, in any other shape, committed in court, commitment to prison being an instantaneous consequence, the same consequence might be attached to such contempt in this shape. Under the name of *evidence*, testimony, when orally delivered, not being received without an immediately previous oath-taking; thus it is that mendacity, whenever it is thus committed, is committed in the shape of perjury; and in this shape this mode of proceeding against it has been — if not employed, at any rate threatened: in which case no *individual* is there, on whom the expense and vexation attached to the character of *prosecutor* would be imposed: accordingly, what in relation to this matter we shall have humbly to propose is — that in every case in which it is seen that the whole of the stock of evidence which the suit affords, is brought out at the time of the perjury, punishment for it may instantaneously follow.

56. So much as to efficiency when the ceremony is not employed: how stands it now that the oath is so almost universally employed? Punishment none, without the concurrent testimony of two witnesses: nor then, but at the expense of a separate prosecution, commenced at a distant point of time, and with such disadvantageous prospects as to success. Proportion of the number of cases in which prosecution has place, to the number in which delinquency has place, — at what shall it be set? Say, for example, at a venture — out of ten thousand, scarcely so much as one. So much as to inefficiency.

57. Thirdly, as to needlessness. For a complete and conclusive demonstration of this property of the ceremony, we humbly beg leave to call on the testimony of the Honourable House. Compared with the importance of the legislative, what is that of the judicial function? When, for the formation of a ground for a legislational proceeding, *evidence* is called in, in what instance is employment ever given to this ceremony by the Honourable House?

58. Thus efficient to bad purposes, inefficient and needless to any good purpose whatsoever in particular, — in particular, to that of giving execution and effect to the law, — far indeed is it from being so, to the sinister interest of Judge and Co.

59. Already mentioned has been its needfulness, with relation to the profit by *written pleadings*.

60. Add to this, the encouragement and invitation given to dishonest plaintiffs and defendants, by the chance which it produces of failure on the part of honest ones; and thence the addition of dishonest to the aggregate of honest demands and defences; the profit to subordinate judicial functionaries, by the fees, partly in the direct way, partly in various indirect ways, necessitated; and to judges their *superordinates*, correspondent profit in the shape of *patronage*, — all by the clumsy and complicated machinery, which, to so large an extent, is, on this occasion, employed.

61. See the country over, for example, *attorneys* converted into *masters extraordinary in chancery*, and for no other purpose.

62. Note now the consequence as to delay, and *non-decision* and *misdecision*: or in one word, *failure* of justice. No machinery at hand, no oath capable of being administered; and the testimony, how important soever the purpose, lost, and the purpose frustrated: frustrated — always for a time; not unfrequently for evermore.

63. So much for its effect when employed on a judicial *occasion*, as well as for a judicial *purpose*. Now as to its effect when employed on *an occasion not* judicial (there not being any actual suit in the case:) only for an *eventual* judicial *purpose*, to wit, in case of prosecution for perjury in respect of it. Under this head, in proof of its inefficiency, the bare mention of the words *custom-house oaths* might of itself be amply sufficient.

Other instances, in which the quality of it is demonstrated and the number ascertained might be adduced; but the range of them being less extensive, respect for religion and its teachers commands our silence — one observation alone excepted; namely, that to oaths, whether assertory or promissory, the *sanction* is the same.

64. So much for *testimonial* oaths. Now as to *official*. Various are the *occasions* on which, correspondently various the *purposes* for which, under the existing system, the obligation of giving employment to this ceremony has place.

Principal occasion, that of *entrance* upon office: *declaration* with relation to *opinions* — *promise* with relation to *conduct*. On neither of these occasions is punishment as for perjury, or punishment in any other shape, attached to what is regarded as a violation of the oath. In all these cases, whatsoever good consequence is looked for, from the solemn promise with the oath attached to it, would (we humbly contend) be equally obtained by a promise declared with like solemnity, unincumbered by the oath.

65. In all these cases, intended or supposed effect of it is — its operating as an instrument of *security*: real effect, operating as an instrument of deception and consequent insecurity: reliance being placed on this inefficient security, others that would be efficient

and applicable, remain unlcoked out for and unapplied.

66. Take, for example, the fee-fed judge: whatsoever line of conduct — conformable to justice or adverse — that it happens to be agreeable to him to take, — pronounced with appropriate emphasis, out come the words — "*My oath!*" *His oath* — does he say? What oath?—who ever saw him utter any form of words under that name? And if uttered, what would it be found to amount to? Just nothing: some vague generality, vying with cobwebs in effectively binding force.

67. Enter now upon the stage *jurymen's* oaths — and with them the everywhere abundant and perennial crop of jurymen's perjuries. To the exercise of this important function, the indispensable obligation of bearing the supposed effective and so much relied on part in this ceremony, stands attached: at the same time, for the production of declared unanimity, — truly or falsely declared as it may happen, continuance in one and the same apartment without respite or refreshment, except by permission of the judge, though death by inanition, with the antecedent course of torture, be the consequence: torture to such a length, at no time ever endured or endurable.

68. Here then as to the consequence in the shape of perjury. Declaration of opinion it is, opinion itself it is not, in the power of torture to produce. Here, then, as often as diversity of opinion has place, here are two antagonizing forces applied to one and the same man, at one and the same time: here is the oath to make him speak true, here is the torture to make him speak false: the torture — this altogether irresistible instrument, employed in the manufacture of perjury.

69. First, as to the prevention of mendacity. To this, altogether needless, on inspection, will be seen to be this ceremony, with the perjury thus essentially sticking to it: thrown away the price—and it has been seen how dear a one — paid for the use of it. Look, in the first place, to *natural* religion. If mendacity, independently of this or any other ceremony, does not stand prohibited, — prohibited, which is as much as to say, visited with punishment, what else is there that does? What, then, is the additional security that it affords? No other can it be than that which would be afforded by some extra punishment apprehended in the future life, at the hands of the Almighty, as about to be undergone on the score of the thus supposed aggravation, over and above that which would be apprehended, if the ceremony were not employed.

70. Now then, for this supposed additional security, what is the price paid? An assumption is made and acted upon: and what is it? That, to the purpose in question, the power of the Almighty is at the disposal of any and every man, who for any purpose chooses to employ it: of any man, howsoever bad, for any purpose howsoever bad, the Creator an instrument in the hand of every one of these his creatures!—an instrument, on the part of which compliance is more assured, than it can be on the part of a slave!—the Almighty more surely obsequious to the will of the most wicked man upon earth, than a sheriff is to that of the judge!

71. Look, lastly, to *revealed religion*. On this score, we humbly beg that, now at length, by the constituted authorities, and in the first instance by the Honourable House, it may be taken into consideration, whether, in addition to these considerations, or even without the aid of them, the words *swear not at all*, in more passages than one, attributed to the holy Author of our religion, might not suffice to put an end to *swearing*, in compliance with compulsion, imposed by those same authorities.

72. As to mendacity, the production of this so abundantly thus produced commodity — is this then the object? Neither to this purpose is it at all needful. Legislators, if simple mendacity will content you — mendacity without perjury for a zest to it — abolish the ceremony: there remains the torture, which is quite sufficient to produce the thus desired effect.

73. Note here, the effect of the torture in the production of mendacity belongs not precisely to the present head. It is however too influential on justice, and the efficiency of the main body of the law, to be suffered to pass without notice. It is — the placing the decision, and thereby in so far the lot of the parties—the placing both under the command of the strongest will: in other words, of the most long-suffering and persevering stomach.

74. Of this ceremony, such as it is, is what is called a violation, a sin? So many times as, being employed, it is violated, so many are the sins created, not to say committed: abolish the ceremony, the manufacture of these sins is at an end: and sins, in number altogether infinite, saved from being committed. Such the security supposed to be thus given against mendacity. True it is that times were, when — not merely on a certain *occasion* for a certain *purpose*, — not merely in conjunction with other securities for veracity, — but singly, and to the exclusion of all such other securities, — this ceremony, having been instituted, was frequently performed.

75. Witness the so stated *wager of law*. *Occasion*, demand of money on the score of debt: *purpose*, the obtaining a discharge from the demands. *Witness*, the defendant himself; testimony, assertion in general terms,

denying that the money forming the subject-matter of the demand, is due. With this witness came a *chorus*, consisting of twelve others, styled *compurgators; subject-matter* of *their* testimony, their belief that what their principal and leader of the band — the defendant — had been saying, was true. But these times, what were they? Times of primeval and grossest ignorance, superstition, and barbarism.

76. In conclusion, as to the whole of this momentous subject, and our respect for the time of the House not permitting us to do anything like complete justice to the importance of it, we humbly beg leave to give intimation to the Honourable House, that the form of a petition, in which fuller consideration is given to it, is in print, and universally accessible.

77. That, in no case, this part of the institution is productive of good effects, is more than we take upon us to affirm. On it depends, for its existence, the latent, but not the less efficient, virtual *veto* possessed by the jury, and thus by the *strongest stomach* among them, over the laws. If, on any point of law to which jury-trial applies, the statute law and common law together is in a state of opposition to the welfare of the community, — in this respect, beneficial, in so far, is the effect of jury trial in its present shape: and on this part of the institution, we beg it may be considered, whether that liberty does not depend — the liberty of the press, to wit — on which everything else, which, in a peculiar manner, is good in the form of government, depends. But to this and the other cases, in which the constituted authorities have a particular interest, more or less adverse to the general interest, such as treason, sedition, and the like, this feature may be preserved, without its extending to any other cases.

78. In any case, to produce whatsoever good effect is expected from the ceremony, the substitution of the word *affirmation* (or, to give indication of *deliberateness,) asseveration*, to the words *swear*, *oath*, and *maketh oath*, might, we submit, most fully and effectually suffice.

79. To conclude, neither to the prevention of mendacity, nor (if such should be the pleasure of the king in parliament) to the preservation and augmentation of mendacity (or, as it is more familiarly called, *lying*) is the preservation of this cumbrous and dissension-sowing ceremony necessary. This we have already taken the liberty to observe and show: and we humbly trust, that to the preservation of that *veto*, which, as above, so long as the government of this country continues in its present form, is so indispensable, — this same ceremony will not be found to be in any way more necessary.

80.—VI. *Device the Sixth—Delay, in groundless and boundless lengths, established.*

Delay is, so long as it lasts, *denial:* and we invite and challenge any person to say why, though it be but for an hour, *denial of justice* should have place.

81. In the process of judicature, — of the various *sources*, or say *causes* of delay — all of them factitious — the work of Judge and Co.— samples (will it please the Honourable House to behold them?) the eight here following: —

I. *Source the first, vacations.* — The year split into *terms* — four in the year — with intervals between them, styled *vacations:* during which last, so far as could be contrived, *denial of justice* remains established. Terms, four: vacations, as many.

In the whole year of 365 days, aggregate number of days allotted to administration of justice, 91: to denial of justice, 274: add Sundays in term time, 13; total, 287: to justice not so much as a fourth part of the time allotted to injustice.

82. —II. *Source the second, circuits.*—For country causes, no *trial* but on *circuits;* circuits, in the year, at the most no more than three; till the other day, but two: in some counties, now two; till the other day, no more than one. In these cases, what is the *crime* for which denial of justice — in a word, *outlawry* (for this it is, so long as it lasts) is thus made the penalty? Is it the crime of living at so great a distance from the metropolis? If not on the account of *crime*, on what other account is the condition of one part of his majesty's subjects, of all ranks, rendered, in so essential a respect, to such a degree, inferior to that of all besides?

83. — III. *Source the third, fixed days.* — Between one proceeding and another, intervals established by *fixed days*, of which, further on, under the head of *Blind Fixation:* days the same, length of interval the same, for every individual suit: say, for example, of a *fortnight*, whereas necessary will be, in some cases, no interval, in others a day, in others again a year or years: none where, upon plaintiff's own showing, his demand is ungrounded; a day or less (for notice) when the residence of both parties is in the near neighbourhood: years one or more, when, at the moment, defendant's residence is, for example, at Australia.

In this latter case, if, as in the established mode, inaction on the part of a defendant is by the judge acted upon as if it were conclusive evidence of the justice of the demand, and judgment and execution take place accordingly — here delay gives place to what is still worse: namely, *precipitation* (of which presently) with misdecision and misconduct for its certain consequences.

84.—IV. *Source the fourth, written pleadings.* — Of these, above. If, a mass of written allegations being exhibited, loss of cause is, as under the existing system, established as a penalty for the non-exhibition of correspondent counter-allegations, — allowance of time for framing them is necessitated, and, on each individual occasion, time adequate to the need, delay in indefinite quantity, is thus made necessary to justice.

85. — V. *Source the fifth, mischievous removals.* — *Needless transference* and *bandying of suits, transference* of a suit from the judicatory in which it has been commenced, to a different one in which it is to receive termination or continuance, as to which under the head of *Device the tenth, mischievous transference, &c.*

86. — VI. *Source the sixth, equity procedure.* — The mode which has place in the judicatories called *courts of equity:* a mode altogether different from that which has place in the judicatories called the *common-law courts;* and in the shape of delay, as also of expense in a prodigious degree still more productive of torment.

87. — VII. *Source the seventh, court christian,* alias *spiritual court,* alias *ecclesiastical court,* procedure. — Of this mode, differing again from both the others, — and, in lengthiness of delay and expense vying with that of the equity courts, — mention is made only to show that it has not been overlooked: for though, in delay as well as expense, it vies with the most dilatory of the two, — yet, the number of suits carried on in it is to such a degree comparatively small, that the use derivable from the picture of the additional torment produced by it, would not, on the present occasion, pay for the space of time and labour it would necessitate.

88.—VIII. *Source the eighth, procedure in appeals;* that is to say, demands made to a superordinate judicatory, for reversal or other change, in the *judgments,* otherwise styled *decrees,* — *ultimate* or *intermediate,* styled *interlocutory,* — pronounced in the judicatories, — original, or say *immediate,* — in which the suits respectively took commencement or received continuance.

89. To procedure in equity courts and on appeals, development is to the present purpose necessary, and here follows.

First, as to *equity procedure.* Endless would be the task of giving anything like a correct and complete sketch of the system of delay, of which the judicatories, styled, as if in mockery, *courts of equity,* present the scene: a few slight touches are the following: —

90.—I. In regard to elicitation of *evidence,* modes in one and the same suit, three: namely, the epistolary, or say written mode; and two varieties of the oral, or say word-of-mouth mode.

91. Epistolary mode. Employed at commencement, *questions* styled *interrogatories,* put by plaintiffs to defendants: name of the instrument of which they form a part, the *bill*

92. Between each such string of interrogatories, and the correspondent string of answers (name of the aggregate, *the answer,*) an interval of months. In one amply extensive parcel of the whole number of these suits, the end in view, as prescribed by interest, is, on the plaintiff's side, the maximization — not of dispatch, but of *delay:* that *interest* being accompanied with the *faculty* of multiplying those intervals of delay by an unlimited number. Sufficient of itself is this state of things to spin out into years, a suit, to which, by an interview between the parties, in the presence of the judge, as in the case of procedure before a justice of the peace, termination might be given in the same number of minutes: debt, for example, on a note of hand, whether for forty shillings or forty thousand pounds.

93. To elicit, *per contra,* for the benefit of the defendant, whose *self-disserving* evidence has thus been elicited, the like evidence from one who is plaintiff in this same suit, another such suit, commenced by a bill styled a *cross bill,* is made necessary. Thus, lest the above-mentioned delay should not be suffieient, — what, in a common-law court, would be but *one* suit, is split into *two.*

94. Note, that as yet not a particle has been elicited, of that which comes from the only source from which a common-law court will suffer any evidence to be elicited,—namely, the testimonial or other evidence capable of being furnished by *extraneous* witnesses; *extraneous* on the present occasion, so called of necessity, to distinguish them from parties, where, as above, information is received from them, or called for at their hands; say accordingly *party witnesses,* or *testifying parties:* and, before the elicitation of any such evidence is so much as commenced, money, to the amount of hundreds, or even thousands of pounds, may, at the pleasure of the plaintiff, if rich enough, be extorted from the defendant, if he has it: and thus is his utter ruin produced.

95.—II. Oral mode employed subsequently in the elicitation of the evidence of extraneous witnesses, and sometimes in the elicitation of ulterior evidence from the defendant. Scene, the *examiner's office:* mode of examinations, *secret.*

96. — III. Oral mode employed in addition to the above, in the elicitation of evidence relative to matters of *detail.* Scene, the office of the subordinate judge, styled a *master in chancery.* For attendance at this office, not more than an hour at a time ever allowed in the same suit: and by any one of these *actors,* of all of whom it is made the interest to maximize the delay, the hour may be cut down to

a time too short for the doing any part of the business. Nor does any such meeting take place till after *three* appointments, with an interval of several days between the second and the third. For these actors, if so they may be called, for every one of them, fees, extorted by the power of the superordinate judge, the chancellor, as if they had all attended: the *master* establishing this mode of obtaining money under false pretences, and sharing largely in the profits of it. Of late years, the salaries of these functionaries have received large increase: and this and all their other modes of depredation left undiminished. Had the enactment made by parliament (it is that of the 22 Geo. II. ch. , § 1,*) been applied to them, as it would have been had they not been in a public trust, not one of the judges by whom, for several generations, these situations have been occupied, — not one of them who would not, over and over again, have been either whipt, pilloried, or transported; for only by power, and consequent impunity and complicity with judges of a still higher order, not by innocence, are they distinguished from those delinquents who, under the name of *swindlers*, are every day so dealt with.

97. — IV. By these judges, *vacations* made for themselves: some, of not less than seven months out of the twelve: witness, declarations made by men of the first eminence in the profession: made in print, years ago; and confirmed by the confession implied in uninterrupted silence.

98. All this forms as yet no more than a part of the length of delay established in equity procedure.

In the greater number of the individual suits carried before the superior common-law courts, — *after* the common-law suit has been made to run its length, still farther length may be added to it; added by any defendant, who, being rich enough, has an interest in so doing; namely, by a suit, styled, as above, an *injunction*.

99. In the year 1824, April 25, year 5th of the present reign, issued a commission: *purpose* of it (so therein declared,) introduction of *improvements* and *changes*: *subject-matter*, declaredly confined to *equity courts* and their proceedings. Five years, within a trifle, have elapsed, and in all this time no *improvement* made; in consequence, no *change* made but such as, in comparison with the abuse, was, in *extent*, conspicuously trifling, and, in *quality*, has proved to be worse than none.

100. In addition to this, another commission instituted in the year 1828, composed of a different set of commissioners: subject-matter expressly confined to the superior common-law courts and their proceedings, as if, in the practice of two sets of courts, with their branches of jurisdiction, to such a degree entangled throughout the whole field, — it were possible to make any substantial improvements — improvements in either, — without *change*, and for that purpose, all-comprehensive *scrutiny*, applied to the other.

101. We humbly entreat the Honourable House to consider whether it be in the nature of man that a separation of this sort, thus deliberately made, by, or by the advice of, persons perfectly conversant with the whole of the business, could have had any better object than the giving perpetuity to a system of depredation and oppression thus portentous.

We shudder at the bare idea of the Honourable House rendering itself an accomplice of such enormities, by remaining silent and inactive, after receipt of this our humble petition, and forbearing to apply either the remedial system, which we shall take the liberty to suggest, or some other not less effectual, if any other such there be.

102. Now for the remaining source of delay — *appeals and writs of error*. Omitting particular cases, in endless variety, when, on the ground of alleged *misdecision*, a suit is transferred from a relatively inferior to a relatively superior court, — if it be in equity procedure, *appeal* is the name — the name given to the operation, or the instrument by which the transference is effected: if it be in common-law procedure, *writ of error* is the name. *Appeal* is the term thus put foremost, as presenting, to an unlaw-learned mind, a clear idea; *writ of error* a confused one.

103. Note, that only for alleged misdecision, that is to say, either at the conclusion, or during the continuance of the suit, are either *appeals* so called, or *writs of error*, received. But, not more effectually done is injustice by *misdecision* than by *non-decision*: by non-decision, whether *after* a suit instituted, or for *want* of a suit instituted.

104. Causes of such *want*, any one of these which follow: — On the minds of persons wronged —

I. Opinion of the relative inaptitude of the system.

II. Opinion of the relative inaptitude of the judges, one or more, employed in the application of it.

III. Fear of being, at any time after commencement, and before conclusion, sunk into the gulf of ruin by the weight of the purse on the other side.

IV. Or, in other situations, relative indigence, such as to produce an utter incapacity of giving so much as commencement to the suit.

105. In some instances, in the case of a *writ of error*, the appeal goes immediately from the four-seated court in Westminster Hall to the *House of Lords*: in other in-

* Ch. XXVII. might correspond to a certain extent with the remarks; perhaps the act meant is 30 Geo. II. c. 24.—*Ed.*

stances, another and more numerously-seated Westminster-Hall judicatory of appeal is *interposed*, under the name of the *Exchequer Chamber*.

106. By an *appeal*, in which and whatsoever way denominated — an additional mountain of delay is set down upon the mountains above sketched out. But of appeal, in both cases, there are stages upon stages, mountains upon mountains, set down, one upon another.

107. For an example of the *stages*, or say *stories*, in this pile — behold in Blackstone the following: sorts of cases to which they apply, those called *civil*: —

I. From various "inferior courts," to the Common Pleas (iii. 40.)

II. From the Common Pleas to the King's Bench (iii. 40, 56.)

III. From the King's Bench to one of the three courts, all confounded under the name of the Exchequer Chamber, composed of so many different lists of judges (iii. 56.)

IV. From the Exchequer Chamber to the House of Lords (iii. 56.)

108. Note well the organization of this chaos.

From the four judges of the Common Pleas, appeal to the four judges of the King's Bench: from these, back again to those same four judges of the Common Pleas; who are thus expected, every one of them, to pronounce condemnation on his own act, with the addition, however, of the four judges styled *Barons of the Exchequer*: which same court of the Exchequer is "inferior in rank," says Blackstone, iii. 43, "not only to the court of King's Bench, but to the Common Pleas also." Thus, to apply conviction to an alleged error in one court, the business of two others is put to a *stand-still*. To complete the confusion, nothing more is wanting, than to give an ulterior appeal from the exchequer chamber immediately, or through the medium of the House of Lords, to a court composed of the judges of some one or more, or all of the judges of the courts herein just mentioned, under the name of the "inferior courts."

109. Of the gradation here exhibited, was ever any instance exemplified in practice? Probably not. But why not? *Answer* — Because the rapacity and wickedness of judges — creators and preservers of this system — have to such a degree outrun the wickedness of their pupils, the attorneys, and the opulence of individuals, whom they have thus employed in the endeavour to convert them into dishonest suitors.

110. Now as to appeal and its stages, in the so-called *equity* courts.

111. — I. When the suit is in the first instance brought before the Chancellor, stage of appeal, but one — appeal to the *House of Lords*.

112. — II. When the suit is in the first instance before the Vice-chancellor, each party has the option between, an appeal immediately to the House of Lords, or, first to the Chancellor; then from him,—as in the instance of this same appellant, or of the party on the other side,— a further appeal may be made to that same Right Honourable House.

113. — III. So, where the suit is in the first instance brought before the other subordinate equity judge, whose title is the *Master of the Rolls*: a functionary, who, under this absurd title, has for centuries exercised the functions of a substitute to the Chancellor; in a word, those of a Vice-chancellor, though without the name.

114. In equity procedure, stages of appeal have place, disguised under different denominations.

115. — I. Under the name of exceptions to report, appeal from the judicatory of a Master in chancery, to that of the Chancellor, the Vice-chancellor, or the Master of the Rolls, as the case may be.

116. — II. Under the name of a *rehearing*, appeal from any one of those functionaries to his successor.

117. — III. Under the name of a *rehearing*, appeal from any one of them at one time, to himself at another time; for thus are two sorts of proceedings, so different in tendency, disguised under the same name.

118. By the Master of the Rolls or the Vice-chancellor a definite decree (suppose) has been pronounced: plaintiff or defendant, losing his cause by it, proposes to himself to take, by means of appeal, another chance. To which, then, of the two judicatories, shall the appeal be made?—the Chancellor's court, or the House of Lords? For answer — the solicitor of the losing party takes the soundings of the two purses, of his client's and of the adversary's: if in his client's there is depth enough for both courts, he recommends the chancellor's as the most eligible court; namely, that from thence if, without reproach to himself, he has the good fortune to succeed in making his client lose his case a second time, he may carry it into the House of Lords, in which there being no ulterior judicatory, it will be his interest, for reputation's sake, and accordingly his endeavour, to gain rather than lose it: from the Chancellor to the House of Lords; that is to say, from the Chancellor under that name, to him, said Chancellor, under another name.

This course, it being that which, in the situation of a solicitor, it is every man's interest to take, is that which, with a view to legislative arrangements, every man, unless prevented, ought to be expected to take; and as to a solicitor, so should this expectation apply itself to every dishonest plaintiff or defendant, who being in the wrong, and know-

ing that he is so, has formed a plan for purchasing of the judges in question the faculty of acquiring or retaining the estate in question, by the ruin of the destined victim, thereby availing himself of the offer which, though not in words, is not the less in deeds, held out by the several members of the learned brotherhood to all who are respectable enough to be able to give acceptance to it: yes, respectable enough; for, in the language of the opulent, opulence and respectability are names of the same thing.

119. A word or two as to the particular sources of profit: profit to Judge and Co. from the delays manufactured as above.

I. By the delay are produced, as above, dishonest suits and defences, which otherwise would not have place: the evil hour is thus staved off to the last moment. To a dishonest defendant, the delay produces, for a time, if he be solvent, at any rate common *interest of money* correspondent to the duration: add, if in trade, profit of trade; if he be insolvent, the faculty of converting the whole to his own use. Of this profit, what part, if any, shall be *net*, depends upon the proportion as between debt and costs of suit. Of the costs, one constant portion is — that which is laid hold of by Judge and Co., the dishonest man's partners and accomplices; laid hold of in the first instance, and before so much as a farthing's worth is paid to any one of those to whom the debt is due.

120. — II. When the debt is such, that the interests amounts to still more than the price paid to Judge and Co. for the delay, the delay follows of course.

121. — III. Delay breeds incidents; incidents, fees. Who shall number the varieties of these prolific incidents?

IV. Bred out of one incident — namely, the incident of death — one inducement to delay is, in cases to a large extent, the extinction put upon the suit, by the death of a party, on one side or the other, — and, on either side or each side, deaths of parties may have place by dozens and scores. Invited by Judge and Co. for joint profit, the injurer, by delays made when in the situation of defendant, helps to consign the injured plaintiff to a lingering death, the result of vexation; Judge and Co. having taken care to exempt from the obligation of making compensation the murderer's representatives. "A *tort* is a sort of thing that dies with the person:" such is the expression given to the rule, in the lawyer's dialect of the flash language.

122. — V. When these factitious delays were first instituted, the minor portions of the year sufficed for as many suits as money could be found in the country to pay for, in fees: the major part being consecrated to ease: in proportion as opulence has increased, *ease* has been exchanged for *fees*.

123. In the business of the department of justice, is factitious delay useful, and as such justifiable? If so, apply it to the finance and defensive force departments: apply it to the military departments, land service and sea service: in particular, in time of *war:* not more indefensible is it in those than in this.

124. Whence this difference? *Answer* — In these cases, were any such factitious delays established, government would fall to pieces: in these cases, accordingly, they are not established: in the justice department, government, however badly, can go on, the delay notwithstanding: in these accordingly, they *are* established.

So much for government. Now for surgery. To a patient who wants to be cut for the stone, does the surgeon ever say, wait with the stone in your bladder till I have nothing else to do? No: by the medical man, no such thing is ever said: by the fee-fed judge it is in effect, as often as he makes a plaintiff wait for his money, when wanted for making payment to the surgeon. Whence the difference? *Answer* — From this: — To produce the delay without losing the customer, is not in the power of the surgeon: it is in the power of the judge: and, so far from losing, he is a gainer by it.

125. On this occasion, as unhappily on so many others, *religion* is pressed into the service of injustice. To St. Hilary, a Catholic saint — to St. Michael, a Protestant as well as Catholic saint — to Christ Jesus — to wit, by the word *Easter*, nay, even to the whole incomprehensible *Trinity*, as St. Athanasius so truly styles it, — does this misery-making employment stand assigned.

126. Out of the Sabbath is made another pretence. "Which of you shall have an ox or an ass fallen into a pit, and will not straightway pull him out on the sabbath-day?" By whom this is said, may it please the Honourable House to consider. If, when it is by mere accident that the damage has been produced, worship of the God of Justice is no sufficient warrant for delay of justice, how much less when it is by injustice? — by groundless distress for rent (suppose) or by robbery? By the worship of the God of Justice, would not an appropriate overture be furnished to the oratorio of judicature?

127. Wives converted into widows, children into orphans; both by slow murder rendered destitute; depredators fattened upon the substance of these victims, Judge and Co. contrivers and sharers in the booty, — such is the scene presented by the fruit of this wisdom — of this branch of ancestor wisdom: the branch to which we are indebted for the plantation of judge-made law.

> "When sleeps injustice, so may justice too:
> Delays, the wicked make; the injured rue."

These two memoriter verses it is our hum-

ble wish to place in the memory of the Honourable House.

128.—VII. *Device the Seventh—Precipitation necessitated.*

Excess on one side is thus made the parent of excess on the opposite side. By delay is produced precipitation: and, reciprocally, by precipitation, more delay. Grand and principal instrument of precipitation, *jury-trial*, as hitherto conducted; but, to its efficiency, vast addition made by circuits.

129. Of the suits out of which a pretence for recurring to this mode of trial is manufactured, classes two: one, composed of those which, by the very nature of the case, are rendered incapable of receiving their termination from a judicatory so composed.

130. Instance, *account:* a case in which, under the name of one single suit, may be included suits in a number altogether indefinite; suits, as many as the account contains *items*, each with a separate batch of evidence belonging to it.

131. The other class of these indeterminable suits, is composed of those which are rendered such by *accident;* that is to say, by the magnitude of the aggregate of the evidence. In the case of Elizabeth Canning, prosecuted for perjury, — time, about the middle of the last century, — seven days passed before the trial was concluded. Since then, instances of still longer duration might, perhaps, be found.

132. In the interval that has place at present between circuit and circuit, what limit can be assigned to the number of suits that might present themselves, if the door, shut against them by this institution, were thrown open?

133. Behold now Judge and Co., syringe in hand, forcing and injecting the whole mass of all the suits into a compass of *three* days, or in some counties *two* days. What is the consequence? On condition of their being heard badly, — in regard to some portion of the whole number, possibility of being heard has place, and accordingly heard they are: in regard to the rest, even under that condition, no such possibility has place.

134. On those which remain in hand is stamped the appellation of *remanents* or *remanets*. For Judge and Co. the more *remanets* the better: the more fresh suits for redress of one and the same wrong.

Not that the number of these disastrous effects is — at all times, or even commonly — altogether as great as that of the efficient causes: for commonly, by the postponement, some, in number more or less considerable, are, at this stage of their existence, prematurely killed: cause of death, deperition of evidence, or death of a party: more frequently perhaps than either, on the part of the injured plaintiff, exhaustion of the power of finding the matter of fees. But for this, *remanets*, in swarms, might go on, begetting one another to the end of time.

135. When one of these indeterminable suits comes to be called on, brought to view then is the discovery — that, from the first, such it was in its very nature. Re-discovered on every circuit is this discovery: re-discovered for centuries past. But, the jury-box is not the less worshipped. Why? *Answer*— Because, as at present constituted, trial *by* jury is, in every instance, trial with lawyers.

136. Fresh suits produced by precipitation are — 1. In an immediate way, *new trials;* 2. In an unimmediate way, namely, by means of *remanets*, *arbitrations*.

137.— I. First, as to *new trials*. Greater in this case may to the parties be the expense, greater accordingly to Judge and Co. the profit, than by the original suit. For, preceded always is the new trial by motion for ditto: which said motion is one sort of suit, carried on for the purpose of determining whether another suit shall be carried on or not: shape of the evidence on which the original suit is determined, the best shape: shape, in which the excretitious suit is sometimes determined, the worst shape — namely, affidavit evidence. Barristers necessarily employed as well as attorney: whereas, in the original suit, it may have been carried down to trial, and perhaps most commonly is, without the intervention of argumentation by barristers: commonly, that is to say, where the *general issue* (as the phrase is) being pleaded, no demand has place for written pleadings of more than a determinate and comparatively short length.

138.—II. Now as to *arbitrations*. Of the disadvantages this sort of suit labours under, with correspondent advantage to Judge and Co., samples are these:—

1. Power for the attainment of evidence comparatively inadequate: not comprehending the power of obtaining it from all places: not ascertained whether in it is universally comprised any power for rendering attendance on the part of witnesses effectually obligatory.

139.—2. If not, then, on many occasions, the body of the evidence will be not merely *incomplete*, but, in the sinister sense of the word, *partial:* admitted, and perhaps exclusively, witnesses, with a *bias* on their testimony—"*willing witnesses*," as the phrase is: and these, biassed all of them in favour of the same side: of which state of mind the very fact of the willingness affords some, although not conclusive, evidence.

140.—III. *Evidence of parties. Admitted* it cannot be, without giving up, as completely adverse to justice, the general exclusionary rule; *excluded*, not without substituting mis-

decision, or denial of justice, to right decision, in a large proportion of the whole aggregate number of the suits, demand for which has place. Yes, *denial of justice:* for, in so far as it is foreknown that by the exclusion put upon evidence necessary to success, all chance of success is excluded,—in so far the suit will not be instituted.

141.—IV. Professional persons, if chosen as arbitrators, must be paid: here—be the payment ever so moderate and well-regulated—here will be a vast addition to the expense: the remuneration being over and above that which, at the expense of the whole community, is given to the *permanent* judges—*judges* so styled and intituled.

142.—V. But, in cases thus disposed of, the mode of payment is in a flagrant degree corruptive and adverse to the professed end: it is payment *by the day;* a mode, by which a *premium* is given for the maximum of delay and extortion: corruption, delay, and extortion, which it is not in the power of human sagacity to prevent, punish, or so much as discover and hold up to view: corruption, which it is not in the power of flesh and blood to remove.

143.—VI. These professional judges, who are they? Naturally such, of the choice of whom, self-regarding or sympathetic interest is more likely than regard for the interest of justice—more likely than appropriate aptitude—to have been the cause. In the train of the judge come always, along with the brief-holding, briefless barristers. Of the choice made, cause not unfrequent, and certainly none so natural, as recommendation at the hands of the judge. Proportioned to the value of every situation is that of the patronage by which it is conferred: and, recommendation taken, patronage is exercised.

144.—VII. Question, which of the suits shall be *tried?*—which, by being left *untried*, converted into *remanents?* This will depend upon the result of the conflict of interests. Yes: but of whom?—the suitors? No: but of learned lords and ditto gentlemen. By sinister interest, full is the swing enjoyed in this case: into it, is it possible for the eye of public opinion in any degree to penetrate?

145. In respect of *favour*, manifest it is here, upon how different a footing stand the *forced* arbitrations brought on in this *circuitous* mode, compared with those *spontaneous* ones which *originate* with the *parties*. So many spontaneous arbitrations, so many usurpations upon the authority of learned judges. Moreover, most commonly the arbitrators will be *unpaid*, or at any rate, *unlaw-learned*, individuals: whereas, on the circuit, a suit will not only have already brought grist to the learned mill, but have moreover brought with it a superior chance for finding learned arbitrators.

146.—VIII. *Device the Eighth—Blind Fixation of Times for Judicial operations.*

I. Only in relation to the exigencies of the case, and the interests of the sincere among suitors, not in relation to Judge and Co.'s profits, will, in this case, the blindness be seen manifested.

147.—II. Blindness to the exigencies of the case? Yes, to all exigencies: to all differences between time and time, to all differences between place and place.

148.—III. Between *dishonesty* and *insanity*, on the part of the creators and preservers of this arrangement—that is here the question—What?—for holding intercourse with the judicatory—for paying obedience to its mandate—appoint, in all cases, the same day for every individual subject to its authority?—on whatever spot, wherever at the time he happens to be, whether within a stone's throw of the justice-chamber, or at the Land's-end, and whether in England, or in Australia, in Peru, or in Nova Zembla? Except for the purpose of deception, is it in the nature of man that any such arrangement shall have presented itself to a sane mind? No: not of honest blindness is this the result; but of sinister discernment on the part of the contrivers, taking advantage of that blindness which, on the part of the people, has, with such deplorably successful industry, been organized.

So much for the policy of *dishonesty*.

149. Behold now the policy of *common honesty* and common *sense:* yes, and everywhere, but in the land of chicane, common *practice*.

I. No suit being (suppose) ever commenced, but by application made to you (the judge) in your justice-chamber, by a proposed plaintiff,—or, in case of necessity, a substitute of his,—settle with him, before you let him depart, the *means of intercourse* with him during the continuance of the suit; the further obligation being at the same time laid on him, of continuing the line, or say chain or series of those *means*, by timely information of every such change as shall eventually have place: reference being moreover at all times made to such other individuals, whose assistance to these purposes may eventually become necessary.

150.—II. Learn from him, as far as may be, the like means of intercourse, in the first instance, with all *other* individuals, whom his examination presents to view in the character of *defendants*, *extraneous witnesses*, or *co-plaintiffs*, or say *co-pursuers*.

151.—III. At the first attendance of each such other individual, make with him the like settlement.

152.—IV. Should any subsequent attendance on the part of the same or any *other* individual be, for the purpose of the suit, ne-

cessary — accident and other exceptions excepted — let the time fixed for it be as *early* as, without preponderant evil in the shape of expense and vexation, it can be.

153. — V. Accidents: for example, death, sickness, impassableness of ways, calamities, casualties, confinement, or transference by force, by fraud, or the like.

154. — VI. Correspondent arrangement as to *inspection*: inspection of things *moveable*, requisite to be inspected by you, in the character of sources of *real* evidence.

155. — VII. So as to things *immoveable*.

156. — VIII. So as to *persons*, by sickness or infirmity, rendered immoveable.

157. — So, as to instruments in *writing*: whether *already* written; or, for the purpose in hand, *requiring* to be written, allowance made in this last case for the quantity of time likely to be made requisite by the quantity, or the quality of the matter.

158. — IX. As to the requisition thus to be made of the maximum of dispatch, note the exceptions following: —

I. When, of two individuals, attendance *at the same time* is requisite, the residence of both or either, — from each other and from the judgment-seat, — is at the time, at a certain degree of *remoteness*: in this case, for the attendance of him whose residence at the time is nearest, postponement; that is to say, to the earliest time, at which attendance can be paid by him whose residence is most remote, — is necessitated by the exigency of the case.

159. — II. So, in regard to any *greater number* of individuals, on whose part conjunct attendance is necessary.

160. — III. So, when the exigency of the case requires the attendance of one individual to be postponed till *after* attendance paid by this or that other.

161. With each individual, with whom, for the purposes of the suit, intercourse is holden, — *places* for intercourse, and in that respect *modes* of intercourse, two: — 1. The justice-chamber; 2. Other places at large: in the justice-chamber, by attendance of the individuals there: other places, in extraordinary cases by visitation, *transition*, or say *migration*, thither on the part of the judge. Thus as to intercourse in the *oral mode*. For intercourse in the *epistolary mode*, in ordinary cases it will be carried on by transference made of the written instrument or other source of evidence, from place to place; transference of letters, by the post, for example: from and to the justice-chamber, will be this transference, in most cases.

162. In this way will conjunct provision be made for the exigencies of each individual suit, and for the convenience of each individual concerned; — delay, expense, vexation — all minimized. So much for the policy of honesty.

163. Return we now to the policy of dishonesty, as it presents itself to a closer view. On the part of each such individual, requisite will be the performance of some *operation*, and, included under the head of *operations*, is that which is performed by the exhibition of some *written instrument* or other moveable source of evidence, as above.

164. Behold now the course, which, in regard to each such operation, and each such instrument, the dishonest plan prescribes.

For each such operation, on the part of every individual concerned, — fix one and the same day. Then, to *the minimization* of the evils in question—the evils, to wit, of delay, vexation, and expense, you will substitute maximization: for, in each individual instance, the chances, against the so fixed day's being a proper day, are as infinity to one.

165. — I. In regard to operations, it will be your care to maximize the number of those by which birth is given to written instruments: for in this case, superadded to the profit — profit in the operation — is the profit upon the instrument. On this occasion, reciprocal generation has place: operation produces instrument; instrument, operations.

166. — II. So, the length of each such instrument.

167. — III. So, the number of the instances in which, for the performance of the several operations, days are appointed on which the performance of those same operations respectively is impossible: for by the impossibility the need of ulterior operations and ulterior instruments will be established.

168. — IV. So, and thence, the number of instances in which need of *application* for *further time*, and application accordingly, shall have place; in particular, the number of those in which the allowance of such time shall be a subject-matter of *contestation*.

169. — V. So, accordingly, of the instances in which the *notices*, without which compliance cannot have place, shall *not* have been received.

170. — VI. So, accordingly, of those in which, the notice shall not have been *given*.

171. — VII. So, likewise of those in which whether the notice *has* or has *not* been received and given respectively, — shall be the subject-matter of *contestation*.

172. — VIII. So likewise the expense of *special messengers*, employed by professional assistants (in this instance chiefly of the attorney class) in making communication of such notices, — the expense, to wit, for the sake of the profit extractable out of the expense.

173. — IX. So, accordingly, the *number* of such *journeys*, and the *length* of and *difficulties* attendant upon each.

174. — X. So likewise, in regard to the journeys employed in the making *seizure*, *definitive* or *provisional* and instrumental, whe-

ther of *persons* or *things*, for the purposes of justice: that is to say, whether for *execution* and effect to be given to a decree of the judge, or for *evidence* to be elicited for the purpose of constituting a ground for it.

175. Admirable, under the existing system, is the equipment made for this species of *chase: — party-hunting*, to wit, and *witness-hunting: —* a chase in which the fox, instead of being the *huntee*, is the *hunter*, and his object is to catch — not as *early*, but as *late*, as possible, and through as many turnings and windings as possible.

176. Behold here an example. For the purpose of obtaining, at the hands of the defendant, the service he stands engaged for — say the money he stands engaged to pay — engaged, to wit, by a *bond*, to which his signature stands attached, adequate ground for regarding it as being his signature, is necessary. This defendant the judge sees standing or sitting in court. Shall this same judge say to same defendant, "Is this your handwriting?" Not he, indeed: no, nor any person by word of mouth. Never since the Conquest was any torment thus barbarous inflicted. By word of mouth, nobody. The hardship of saying *Yes*, or *No* would be unendurable. In writing? Yes, so it be by the plaintiff and by a bill in equity, length from half a dozen pages to any number of sheets of ordinarily-sized letterpress: as to time, at the end of years five or more as it may happen. Yes, or by word of mouth, so it be by learned counsel to a witness who has been hired to come, say from Australia for this purpose, if there be no person, whose residence is less remote, and by whom the information can be afforded. Both those resources failing, the defendant, by the hands of Judge and Co., pockets the money: the right owner loses it.

Think of a judge, with this spectacle before his eyes, turning them aside from it — lifting them up to heaven, and proclaiming, in solemn accents, his love of justice!

177. By the arrangements hereinafter submitted, put down altogether would be this pastime.

178. As to *fees*, inexhaustible is the source of them, thus created by *chicaneries about notice*.

179. Under the existing system, to this relatively so desirable state of things, with what consummate skill and success, and not less consummate effrontery, the *blank fixation* device has been adopted, may now be, with sufficient distinctness, visible.

180. To all these sinister purposes, it has been seen how indispensably necessary was the primordial, radical, and all-producing device — *exclusion of parties*, severally and collectively, from the presence of the judge.

181. So will it presently be seen, to all these same purposes, how exquisitely well adapted is the system of *mechanical*, substituted as far as possible to *mental*, judicature.

182. Nor yet, for reconciling the public mind to this host of enormities, and of sufferings produced by them, — are *pleas* altogether wanting: pleas with which pleasing or imposing ideas stand associated: words, such as they are, have been found in *uniformity*, *regularity*, and *strictness:* pleas furnished by the ascendency so extensively prevalent of imagination over reason.

183. Uniformity? What uniformity? *Answer* — That produced by the fabled arrangement in which, between the bed and the men reposing on it, uniformity in length was produced by cutting off the redundant part of each body which was longer, and stretching out to the requisite length, each body which was shorter, than the bed. Here is *uniformity;* and, this being done according to rule, here is moreover *regularity;* and, for the display of the heroic strength of mind, requisite and produced by this branch of the gymnastic exercise, added not unfrequently is the word *strictness:* strictness in the observation of justice-killing and misery-begetting rules.

184. — IX. *Device the Ninth — Mechanical, substituted to Mental, Judicature.*

In so far as, in the production of any effect, *machinery* is employed instead of *human labour*, machinery is employed instead of *mind:* for example, in the shape of a man, an *automaton* figure, such as has been seen, forming writings with its hands.

185. Origin of this device, a problem: a problem from the beginning, proposed to one another by Judge and Co. Purport of all this — how to administer justice without a thought about the matter: reward for solution, — trouble, time, labour, responsibility, — all minimized: meaning always by *time*, Judge and Co.'s time: ditto, profit of course, on this, as on all other occasions, maximized. Nowhere in Euclid is to be found any problem more skilfully and effectually solved than by Judge and Co. this.

186. For proof as well as elucidation, one example will supersede all need of recourse to others. This is — the operation styled *signing judgments*. Machinery and mode of operation, this.

187. Machine, a pair of scales, invented by the demon of chicane, in derision of the scales of justice. Kept in one scale, papers styled *judgments;* kept vacant the other, for the reception of fees. Drop into it the appropriate fee, up rises the appropriate judgment. This the attorney (the plaintiff's attorney) takes in hand, and off it goes to the sheriff for execution. Such is the way in which money, to the amount of hundreds of pounds, thousands, or tens of thousands, is made to pass

from defendant's pocket into plaintiff's. His lordship, under whose *auspices* this *legerdemain* is performed, what knows he of all this? Exactly as much as his learned brother in Calcutta.

188. To such perfection is the invention brought — so complete the mechanism produced — not so much as even in pretence is it by the *judge* that the effective operation is performed. "*I have signed judgment*," quoth plaintiff's attorney. Nor yet is so much as this true. What *is* true is — that it is by a journeyman of the chief-justice's that the signature is performed: all that the attorney has done is the paying him for so doing. And the journeyman — what knows he about the matter? *Answer* — That an instrument, which, on the *blind fixation principle*, as above, should by defendant's attorney have been put in by a certain day, had not been put in by that same day.

189. Now for a reason for such judicature: where shall it be found? Without so much as a particle of blame on the defendant's part, or even on his attorney's part, in how many cases may it not happen that the failure took place?

190. In a system having for its end the ends of justice — in a word, in the here proposed system, cases forming so many grounds of excuses, would, as in the infancy of English jurisprudence, received under the name of *essoigns*, be looked out for, and a list formed of them. But, suppose even *blame*, and to any amount, might not *compensation*, if to the same amount, suffice?—compensation instead of the ruin, of which execution given to the judgment may be productive?

191. "Persons.... obtaining money.... by false pretences.... may be punished by fine and imprisonment, or by pillory, whipping, or transportation." These words stand part of the marginal abridgment of the first section of the statute 30 Geo. II. ch. 24, § 1, in the statutes at large; which statute is, in Ruffhead's edition of the statutes, referred to under the head of *cheat, swindler*, as the name by which, in common parlance, persons so offending are designated. Seeing this, we humbly entreat the Honourable House that it may be considered whether, by the high-seated functionaries by whom fees are obtained by warrants for attendance paid before them, although such attendances were never paid nor intended so to be, money has not at all times been obtained by false pretences; as also to consider whether if there be, either in a *legal* or a *moral* sense, guilt in the obtaining money by such means, the guilt is lessened by the power by means of which such obtainment is effected: whether, if functionaries so seated in those and other judicial situations, were not, to every practical purpose, in this respect, above the law, obtainment by such means would not be an act of extortion, and, as such, a crime; and whether, by the addition of extortion, and, on the part of a suitor, the impossibility of avoiding to comply with the demand so made, the moral guilt attached to the idea of *chicanery*, or say swindling, is in any degree lessened. We acknowledge that it is in the power of the Honourable House, with the assent of the House of Lords and his Majesty in Parliament, not only by connivance, but by express enactment, to give impunity and encouragement to the above, and any or all other persons, who, being constituted in authority, obtain money by false pretences; and this, while persons not constituted in authority are, for obtaining money on false pretences, punished in manner above mentioned: and moreover, that it is fully in the power of that authority of which the Honourable House is a branch, to give impunity and encouragement to every enormity, to whatever extent maleficent, and by so doing to cause the act not to come with propriety under the name of a *crime*, nor the actors to be, with propriety, denominated *criminals*; and accordingly, to cause to be punished, as for a libel, all persons speaking of these under that name: which, accordingly, we forbear to do otherwise than hypothetically, as above: but we humbly entreat the Honourable House to consider whether it would not be more for their honour and dignity to endeavour to repress maleficence in this, as well as in every other shape, than in this, or any other shape, give impunity and encouragement to it.

192. If, instead of this mechanical, mental were the mode of judicature, how would the matter have been managed? *Answer* — Of each individual case, of each individual person concerned, the circumstances would be looked to; of each individual person the feelings taken for objects of sympathy and consideration; respite upon occasion granted; pecuniary circumstances, on one side as well as the other, taken into the account: claims of other creditors not neglected, though not parties to the suit, nor privy to the *application* by which it was commenced.

193. — X. *Device the Tenth — Mischievous Transference and Bandying of Suits.*

Instead of transference and bandying, the one appellative, *removal*, might better have been employed: removal — that is to say, of a suit from one judicatory to another.

194. Removal may be, and is, either — 1. Established; or, 2. Incidental: *established*, when by usage it takes place in every individual suit of the sort in question: *incidental*, when it does not take place but in consequence of some extraordinary operation performed by some person for that purpose; some person usually, if not exclusively, a party on one side or the other of the suit.

195. Under the existing system, when it

has place incidentally, a *certiorari* is the name of the written instrument by the issuing of which the removal is produced: of this further on.

196. Subject-matter of the established removals, two: namely—I. Incorporeal the *operation*, performed on the occasion of the suit; corporeal the written instruments, brought into existence, or into the custody of the judicatory, in consequence of the commencement given to the suit: including every such account, or say history, as happens to be given of these same operations: as also any such other *things moveable*, if any, as happen to have been presented, or intended to be presented, to the view of the judges, in the character of sources of evidence — that is to say, *real* evidence.

197. — II. In case of *removal*, whether established or incidental, the suit is by some other judicatory *received:* call this the *recipient* or *subsequential:* and for distinction, call the first-mentioned judicatory the *originating, original,* or *primordial.*

198. — III. If, after removal, the suit *does not* return to the primordial judicatory, call the removal *transference,* or *simple transference;* if it *does* return, *oscillation* or *bandying:* in case of *bandying,* the transference is followed by *retrotransference.*

199.—IV. Emblems—of oscillation, a *pendulum:* of bandying, *battledore* and *shuttlecock.*

200.—V. Where oscillation has place, returns are in any number secured by what has been called *pre-established harmony:* at battledore and shuttlecock, to every return a fresh application of mental power is indispensable.

201. — VI. As to *precipient judicatories,* they have place of course in a number correspondent to that of the oscillations of the pendulum, or the strokes of the battledore.

202.—VII. From the operation here termed *removal,* distinguish that designated by the word *appeal.* Under every system, *appeal* is for *cause assigned,* namely, on the part of the judge of the originating judicatory, either *misdecision,* or *non-decision* productive of the same effect as misdecision: misdecision, either ultimate or *interlocutory,* or say *interventional:* in any case, *misconduct.* In the case of what is here meant by *removal,* no allegation or supposition of any such misconduct has place.

203.—VIII. Under the here proposed system, incidentally, both simple transference and removal have place. But in every case it is for cause specially assigned: thence in the way of *bandying;* not in the way of *oscillation.*

204. Under the existing system, in no case will the removal be seen to have any good cause assigned or assignable. Good cause, none: but as to *effects,* bad effects in abundance; bad in relation to the interest of the community and the *ends of justice:* thence, herein, as above, termed *mischievous:* good, at the same time, in correspondent abundance, relation had to Judge and Co., and their particular and sinister interest: and thence in relation to the actual ends of judicature.

205. To return to the *here proposed* system, and to the good effects which under it are deducible from the removal in question, and would accordingly be deduced from it. *Execution, evidence, intercourse;* — to one or more of these objects will be found referable everything that can be said of the *operations* or *instruments* which have place in judicial procedure.

206. — I. *Execution,* to wit, of the enactments of the *substantive* branch, or say the main body of the law: under which head is comprised everything that does not belong to the *adjective* branch, or say *procedure:* enactments, really existing in the case of legislation-made, imaginary in the case of judge-made law.

207.—II. *Evidence,* for the purpose of forming a ground for what is done in the way of *execution.*

208.—III. *Intercourse,* to wit, between the judge and all other persons concerned, for obtaining evidence and effecting execution: including the securing the means of such intercourse from the commencement to the termination of the suit.

209. — IV. Giving, to all these several objects, accomplishment, with the minimum of delay, expense, and vexation, to the individuals concerned.

210. — I. First, as to *execution.* For this purpose, need of removals — of removals in a number altogether unlimited — may have place. In proof of this, a single example may suffice. *Judge-shires* (as herein proposed) say two hundred. For whichsoever purpose — say satisfaction to a party wronged, or punishment — seizure and sale of defendant's effects requisite: within any number of these judicial territories, so many portions of these effects may happen to be situated. In this case, even though perfect intercommunication of jurisdiction was to have place between the judge of each judge-shire and the judge of every other; still preponderant convenience might require, that for this purpose employment should be given to the power of the judge of this or that *subsequential* judge-shire.

Originating judge-shire, or say judicatory, suppose in London: of the effects, one parcel in Liverpool. Of seizure and sale, the purpose might perhaps as conveniently be fulfilled by mandate from the London judge-shire. But, for the discovering what they are, and in whose possession situated, suppose *evidence* necessary, and that evidence composed of the testimony of a person resident in Liverpool: here, expense and delay in no small proportion will be saved, if it be by a Liverpool

judge instead of the London judge that the examination of the Liverpool witness is performed.

211.—II. As to *evidence*. In regard to evidence, what is desirable is, that, in each individual case, whatsoever evidence the case affords, be obtainable, in whatever part of the globe it happens to be situated; whether in England, Ireland, Scotland, a distant dependancy, or a country under foreign dominion: obtainable with the best security for its completeness and correctness, and with the least delay, expense, and vexation: with least delay, and accordingly from persons and things in any number, at the *same time*.

212. Good effects in this respect obtainable from removal, and not otherwise, these.—

I. Obtainment of evidence not otherwise obtainable.

213.—II. Obtainment of it in the *best shape*, that is to say, that which it assumes when elicited in the *oral* mode: when, otherwise, it could not be elicited but in a less instructive shape; namely, when elicited in the *epistolary* mode.

214.—III. Obtainment of it from its several sources, namely, persons and things, in any number at the same time, for the purpose of the same suit; and, in each instance, in that one of the two modes which, on that individual occasion, is best adapted to the aggregate of the purposes of justice.

215.—IV. Accomplishing the elicitation, not only with the minimum of delay and vexation; but that minimum laid, in each individual instance, on the shoulders best able to bear it: namely, those of the public at large, in so far as practicable without preponderant evil in the shape of addition made to the expense.

216. For all these several purposes, removal of the suit from the originating judicatory to some other or others, is eventually necessary; that is to say, in so far as the means necessary for the accomplishment of these three several objects respectively in the best mode, fail of being in the power of the *originating* judicatory, and at the same time are in the power of some other, which accordingly is constituted the *subsequential* and *recipient* judicatory.

217. Of the benefit in all these shapes, a necessary instrument will be seen to be the division of the local field of judicature into the above-mentioned compartments, styled on this account *judge-shires*: extent of each judge-shire limited, in such sort that, the *justice-chamber* being in the centre, every inhabitant, not disabled by infirmity, may, during the sitting of the judicatory, be in attendance therein, without passing the night elsewhere than at his own home.

218. Mode of elicitation, oral or epistolary: places, the originating or subsequential judicatories, in any number, according to the exigency of each individual case.

219. Eventually subsequent to epistolary, oral elicitation: now for the first time this arrangement: object of it, check upon, security against, falsehood.

220. Where, for correctness and completeness of the whole body of evidence, the confrontation of all persons speaking to the same fact is regarded as necessary,—confrontation accordingly: not otherwise: place, either the original, or some subsequential judicatory.

221. So, order in respect of time of elicitation as between the several examinands: that is to say, co-plaintiffs, if any,—defendants, and other persons at large, in the character of extraneous witnesses.

222. Now, as to *retro-transference* and *retro-reception*, or say, return of the suit to the originating judicatory. Demand for it will in some instances have place, in others, not: purpose of it, continuation of the series of *operations*, by which commencement had been performed.

223. By all these arrangements taken together, minimized will be seen to be the burthen of the expense: that is to say—1. By minimization of the extent of the judgeshire, the quantity of the expense, of journeys and demurrage; 2. By transferring to the letter-post the conveyance of such of the written instruments as are contained within the compass of an ordinary letter, expense of intercourse in so far minimized; 3. By laying on the shoulders of government, and thereby of the public at large, that same expense, together with the whole of the remuneration of all judicial functionaries,—minimized will be the *hardship* of the burthen, by its being laid on the shoulders best able to bear it. Thus provided for by far the greatest part of the expense: other part, by fines for delinquency on the part of defendants, where there is no individual specially wronged, and for *misconduct* in the course of the suit, on the part of suitors on both sides: particularly if in the shape of falsehood: always remembered, that the burthen of compensation has the effect, and even more than the effect, of money to the same amount exacted, and applied to the use of the public, or in any other way disposed of.

224. By the *evidence-holder*, understand the person whose testimony is requisite, or who is in possession of the *writing*, or other *thing* which is the source of the evidence. When of this evidence-holder, the residence is at the time in the dominion of a *foreign* power, elicitation in the epistolary mode may be practicable or not with advantage, according to circumstances. Practicable it will be in so far as, by any means, he happens to be in effect subject to the power of the judicatory: means of such subjection, subject-matters of

property, whether *moveable* or *immoveable*, in possession or expectancy, certain or contingent, so circumstanced as to be susceptible of seizure by the judge. So, as to subject-matters termed *incorporeal*, that is to say, *rights* of all kinds. From the impracticability of making this mode of elicitation available in some cases, no reason assuredly can be deduced, for the not employing it in any case in which it can be made available.

225. In so far as, for any of the above purposes, on any of the above occasions, removal in each of the two modes, with or without retro-transference to and retro-reception on the part of the originating judicatory, has not place, — manifest it will now (it is hoped) be, that the jurisdiction of the whole territory cannot but be, as the phrase is — *lame:* and in what a multitude of its organs and muscles jurisdiction is under the existing system lame, and to all good purposes impotent, will be manifest to every person, in proportion as his conception of that same system is correct and complete.

226. For extraordinary removal, sole case this: — By a judicatory, or by a tribunal of exception, cognizance taken (suppose) of a suit, which lies not within its competence; here will be a case — either for the *extinction* of the suit altogether, or for the *removal* of it into the sort of judicatory, to which (those exceptions excepted) cognizance is given of all sorts of cases. Tribunals of exception these: — *Military* judicatories for the establishment of appropriate discipline among military functionaries, in both branches — land branch and sea branch — of that service: *ecclesiastical* functionaries (in a country in which an ecclesiastical establishment has place) for the establishment of discipline among ecclesiastical functionaries.

227. Removal in both shapes will, in some cases, of necessity, have place in the same judgeshire; for example, as between the judge *principal* and judge *depute*, — in case of death, simple *transference:* in case of temporary inability through illness — perhaps simple transference — perhaps oscillation or bandying, may be the more eligible course.

Only that it may not be supposed to be overlooked is this need mentioned.

228. Enter now the existing system. Short account of it, as to this matter, this: — The *purposes* for which, — the *occasions* on which, so as to be conducive to the ends of justice — say in a word *useful*, — the removal will take place, have been seen. Under the existing system, for none of these purposes, on none of these occasions, has it place: on none but where (the rare case — that of applying a check to usurpation alone excepted) it is worse than useless.

229. Intricate is here the complication, vast the labyrinth constructed by it: to let in upon the whole expanse the full light of day, would be an endless enterprise: only, by way of sample, upon a hole-and-corner or two, can a few rays be endeavoured to be cast.

230. — I. Sample the first. Mode of established removal, the simple transference mode. 1. Class of cases and suits, that called *criminal*. Species of cases, that called by the nonsensical term, *felony:* thus denominated from the sort of punishment attached to it: nonsensical, because no idea does this denomination afford of the *nature* of the evil; nor therefore of the *cause* for which it is thus dealt with.

231. Course taken by the suit in these cases, this: —

Case the first: — Judicatory in which the suit is tried, the original common-law judicatory, having for its seat, in a country cause, the assize town.

I. Originating judicatory, that of *justices of the peace*, one or more, acting otherwise than in general sessions, as above.

II. First recipient judicatory, the *grand jury* for the county, sitting at the place where the trial is about to be performed.

III. Second and last recipient judicatory, that in which the *trial* is performed, as above. In this case, it is in that same town that the judgment is pronounced. Place of execution varying; but no return in any case to the originating judicatory.

232. Note that, in the case of *homicide* — a crime belonging to this same class of *felony* — an originating judicatory, taking cognizance antecedently to the above, is the court called the Coroner's Inquest: judge, the *coroner:* with a jury called the *inquest jury*.

233. Of these removals, note now the consequences in regard to *evidence*. Short account this: Shape in which the evidence is elicited, more or less different in all these cases; the mass elicited on the first occasion made no use of either in the second or the third: the mass elicited in the second made no use of in the third: the two first masses — after the expense, labour, and time, employed in the elicitation of them, thrown away.

234. Even of this third mass no use is made for any purpose subsequent to the *verdict*. For, being elicited in the oral mode, it is not committed to writing, by authority; — only by accident, that is to say, by this or that individual, by whom the profit on publication is looked to as affording a sufficient return for the labour and expense of *minutation*.

235. In one class of cases, the suit does receive its termination in the same judicatory in which it has received its commencement: these cases are of the number of those consigned to the cognizance of a justice of the peace acting singly, or two or more in conjunction, out of general sessions. Now then,

supposing the judicatory aptly constituted, why (except in the cases provided for under the herein proposed system as before) why should it not so do in these, and, in a word, in all other cases? And where is the case, in which the judicatory should be otherwise than aptly constituted?

236. In the originating judicatory—namely, that of the justice of the peace acting singly, — sometimes a *part* only of the stock of evidence which the individual can afford, will have been elicited — sometimes the whole of it, as it may happen; but where the whole of it does happen to be elicited, the suit is not the less sent in to those other judicatories.

237. Moreover, where, after the whole of the evidence which the suit affords has been heard, including the evidence on the defendant's side, — be this evidence in its own nature ever so satisfactory, and as against the defendant conclusive, yet thereupon, when the suit has been transferred to the secret judicature, — the grand jury, it is liable to be, and not unfrequently is, decided the opposite way, on evidence heard on one side only: meantime evidence-holders have had from a day to half a year given to them, — to go off of themselves, or to be bought off,— and, in prison, the defendant, guilty or not guilty, that same time, for *contaminating*, as the phrase is, or being contaminated, or both: if not guilty, there to moan under the oppression, thus, for the benefit of Judge and Co., exercised on him: and, whether he be guilty or not guilty, the country is made to suffer under the expense of keeping him in a state of forced idleness.

238. Cases in which removal in the oscillation or bandying mode is employed, these:

All suits termed *civil*, commenced in any one of the three common-law Westminster-hall courts.

239. In Westminster Hall, they take their commencement without elicitation of evidence: their commencement, viz. in the office of a clerk: mode, the mechanical mode, as above; the judges not knowing anything about the matter: applications, incidental and accidental, excepted; for example, for *leave to plead*, or for *putting off the trial*.

240. For elicitation of evidence, in a country cause, off goes the suit to an assize town, there, as the phrase is, to be *tried;* to wit, by the elicitation there performed, by a judge dispatched thither from one of the Westminster-hall courts, with a petty jury.

241. The trial performed, back it comes to the judicatory from whence it had emanated; and there it is that, in the mechanical mode as above, it receives judgment.

This done, then back again it goes to the same county for *execution;* but, for execution, the office it goes to is — not any office belonging to the court in which it originated, nor that in which the trial was performed: it is the office of the sheriff of the county in which the suit was tried.

242. Such is the operation of the *judgment*, when it has for its subject-matter, a *person*, or a *thing moveable* or *immoveable:* whereupon the officer causes hands to be laid upon the person or the thing; and, in the ordinary course, does by that same person or thing what by the judgment he has been bid to do. But, in some cases, the suit has for its subject-matter nothing on which hands can be laid; — nothing but a fictitious entity — an incorporeal thing — to wit, a *right*, or an *obligation;* in which cases, as *execution* consists in the extinction of the obligation or the right, *words* contained in the judgment suffice — words, without acts and deeds, for the performance of it.

243. Now for removal upon an almost universal scale — removal by *certiorari*.

Exceptions few excepted, from all courts a suit is, at any stage, removable into the King's Bench. Instrument of removal, a writ styled in the Judge and Co.'s dialect of the flash language, a *certiorari:* in the language of honest ignorance, a *sisserary:* witness the threat, "I'll fetch you up with a sisserary."

244. Eminently mischievous to the community at large, correspondently beneficial to Judge and Co., is this same monster. Mischief it does in two ways: — 1. By its operation when not killed; 2. By its dead carcase when, by a clause in a statute, killed. Of such as are let live, the effect is — from a less expensive, and comparatively to Judge and Co. unprofitable, judicatory, to send up the suit to a more expensive and more profitable judicatory: as to the *carcases*, they are those of the *certioraris*, killed in embryo, or *endeavoured so to be;* that is to say, in and by every statute, by which additional jurisdiction is given to a justice of the peace, or other summarily acting judicatory. In this case, one of two things: — either, by the insertion of the clause by which the death is produced, so much rubbish is shot down into the statute-book, or else danger of inefficiency is left by the non-insertion of it.

Note by the bye, that in every such statute, this is but one of a string of efficient causes of inefficiency, which must be thus dealt with, or the like effect will follow.

245. Yes, *endeavoured* to be: for (as law-books show,) not in every instance has the endeavour been successful: on this occasion, as on all others, in comes the established habit of Judge and Co.: when a clause of an act of the legislature is brought before them, they pay obedience to it, or run counter to it, as they feel inclined: *moulding* the law, is among the phrases on this occasion employed.

246. Now for the *instrument* and *document*,

which, in case of *removal*, whether *established* or *incidental*, is the corporeal subject-matter of this same operation; the *suit* being the incorporeal subject-matter of it. Of this instrument, the proper contents will be composed of a *statement*, or say *history*, of the several *proceedings*, carried on in the course of the suit: proceedings, — that is to say, appropriate operations performed, and written instruments framed and issued or exhibited: contents, for various purposes, *proper*: for the purpose of appeal, and in so far as that is in contemplation, altogether indispensable.

247. Of this history, by far the largest, the bulkiest part, will consist of an account of the *evidence*: to the evidence which by this means, for this purpose, has, in the course of the suit, by the correspondent operations been elicited in the word-of-mouth mode: — the expression given to it by the pen, by the *taking it down*, as the phrase is, or in one word, *the minutation* of it, will constitute a *written instrument*.

248. Hereupon, in the instance of each individual suit, will arise two questions: — 1. Shall the minutation be performed? 2. When it is performed, shall the result be, for any and what length of time, preserved? To both these questions, the proper answer will depend — upon the proportion between the *profit* in the way of *use* elicitable from the document, and the *loss* composed of the expenses: always understood — that whereso-ever appeal is in contemplation, *preservation* will of course not be less necessary than *creation*.

249. As to all matters besides the evidence, so small in comparison will in every instance be the bulk of them, that of what is necessary to either of these operations, of no part can the expense be grudged.

250. Obvious as may seem these observations, not so obvious are they as to be superfluous: for by them will judgment have to be pronounced on the practice of the existing system in relation to the subject-matter of them.

251. Enter now accordingly, the existing system. To the difference between courts of record and courts not of record, prodigious is the importance attached by it. Mountains, in the survey taken of them, the courts of *record*: mole-hills, the courts *not* of record.

252. Now as to the treatment given by the two sorts of courts to the mass of evidence belonging to the suit.

In the record of the courts of record, not a syllable of this same evidence is ever inserted: and in particular, in those of the Westminster-hall courts — the King's Bench, the Common Pleas, and the common-law side of the half common-law, half equity court — the court of Exchequer.

253. In the records of the courts not of record, every syllable of the evidence elicited. Witness — 1. The Chancery court: including its subordinate branches, the Vice-chancellor's and the Master of the Rolls' court; — 2. The courts held by the bankruptcy commissioners, and which are also courts subordinate to the Chancellor's court; — 3. The equity side of the Exchequer court.

254. Between the real state of things, and the pretended state, as intimated by the denomination thus given, — whence this seemingly strange difference? *Answer* — By the common-law court it is that this nomenclature was framed. Courts to which the depreciatory denomination was attached by them, the shops of their rivals in trade: rivals, with whom for a length of time they had fierce battles; till at last an accommodation was come to: — of course, at the expense of customers, and of those who should have been, but by the expense were kept from being, customers.

255. Of the particulars contained in the instrument styled the record, as framed in the courts self-styled courts of record, what shall be the account given? Short account this: —

I. Written pleadings, which ought not to have been exhibited.

II. Mendacious assertions, by word of mouth and in writing, which ought not to have been uttered.

III. Delays such as have been seen, which ought not to have been made.

IV. Ulterior delays — fruits, such as have been seen, of the precipitation established.

V. Products, of the blind fixation as above — days appointed, for operations, which it was foreknown could not on those several days respectively be performed.

VI. Operations, which, in pursuance of the system of mechanical, *vice* mental judicature, are stated as having been performed by the judge, though, if performed at all, it is not by him that they have been performed.

VII. Removals made, which ought never to have been made.

256. Prefaced the whole by a fabulous history of *apparitions*: statements asserting *appearances* as having been made by unhappy defendants (and in these courts what defendants are not unhappy?) who from beginning to end never did appear: they not knowing, nor having it in their power to know, what to do, had they appeared: and knowing but too well that, had they appeared, their appearance would have been of no use.

257. As to the written pleadings, — note, that though otherwise than in an eventual, indirect, and disguised way, as above, the effect of evidence is not given to them, — not unfrequently more voluminous are they than the evidence is, or would have been if properly elicited.

258. As to *suit* and *record* taken together, — under the existing system, general conclusion, as intimated at the outset, this: To any useful purpose, removal none: to purposes worse than useless, removal in abundance.

259. — XI. *Device the Eleventh — Decision on grounds avowedly foreign to the Merits.*

☞ For the matter belonging to this head, reference may be made to the Full-length Petition.

260. — XII. *Device the Twelfth — Juries subdued and subjugated.*

☞ For the matter belonging to this head, reference may be made to the Full-length Petition.

261. — XIII. *Device the Thirteenth — Jurisdiction split and spliced.*

In the Full-length Petition (pages 482 and 483) have been seen, the sorts of courts, splinters from the one original *Aula Regis*, each with a different scrap of jurisdiction. Number, not less than thirteen: without reckoning others which in process of time came to be superadded. Number of *judges* in these respectively, from *one* to an undefinable greater number: species of functionaries, acting in various ways in *subordination* to the judge, in one alone of these same thirteen sorts of courts (as per Full-length Petition, page 400) more than twenty; not to speak of the other sorts of subordinates acting in the *other* sorts of courts: all these species, instead of the four or five, which, in every court would (as per page 491) with the addition of no more than two or three others in some special cases, be sufficient.

262. That confusion may be still worse confounded, behold now a sample of the diversification which, in these same judicatories with their additaments, the denomination given to the character of *judge* has been subjected to: the function belonging to that character being disguised, under and by most of those several denominations: a sample only — not a complete list: for the labour of making it out would have been unrequited, and unendurable. Here they are —

1. Lord High Chancellor.
2. Lord Keeper of the Seals.
3. Lord Commissioner of the Great Seal.
4. Master of the Rolls.
5. Vice-Chancellor.
6. Lord Chief-justice of the King's Bench.
7. Lord Chief-justice of the Common Pleas.
8. Lord Chief-baron of the Court of Exchequer.
9. Puisne (pronounced puny) Justice of the King's Bench and Common Pleas.
10. Puisne Baron of the Exchequer.
11. Master in Chancery.
12. Master of the Crown-office.
13. Prothonotary of the Common Pleas.
14. Remembrancer of the Court of Exchequer.
15. Commissioner of Bankruptcy.
16. Commissioner of the Insolvency Court.
17. Justice of the peace.
18. Chairman of the quarter-sessions of the peace.
19. Recorder.
20. Common Serjeant.
21. Commissioner of the Court of Requests.
22. Privy Counsellor.
23. Chancellors of the duchy of Lancaster: of the bishoprick and county palatine of Durham.
24. Vice-chancellor of a University.
25. Lord Delegate.
26. Dean of the Arches.
27. Chancellor of an Episcopal Diocese.
28. Surrogate of a Diocese.
29. Commissary of an Archdeaconry.
30. Assistant-barrister (in Ireland.)
31. Grand Juryman.
32. Constable of the night.
33. Annoyance Juryman.
34. Coroner.
35. Steward of Manor Court.
36. Warden of the Stannaries.
37. Warden of the Cinque Ports.
38. Vicar-general of the Preachers. (Quere, whether judicial?)
39. Official Principal of the court of Arches.
40. Master of the Prerogative Court.
41. Master of the Faculty Office. (Quere, whether judicial?)
42. Official principal to various deaconries and archdeaconries.
43. Commissioner of the Hackney Coach Office.
44. Commissioner of Excise.
45. Commissioner of the Customs.
46. Commissioner of the Audit Office.
47. Auditor-general (of Greenwich Hospital.)
48. Commissioner of a Court of Claim.

263. As to the confusion in which the enumeration thus made of them is involved, — so far from being a *blemish*, it may be stated as a *merit*: serving, as it does, to render the portrait the more appropriate and perfect a representation of the original.

264. Behold another evil, produced by the jurisdiction-splitting, and not brought to view in the full-length petition. This is — the all-pervading denial of justice, produced by the exclusion put upon one or other of the two remedies which wrong in every shape calls for: namely, the *satisfactive* and the *punitive*. Modes of procedure, the *fissure* makes two: — the one styled *civil*, the other *criminal*: in and by the *civil* you may demand the *satisfactive*; in and by the criminal, the *punitive*: in some cases, you may have the one; in other cases, the other: but with scarce an exception, both together, — either by one and the same

suit, or by two different suits, — you cannot have. As to courts, — the *satisfactive* remedy, you are admitted to demand at the hands of either of two courts — the King's Bench or the Common Pleas; not to speak of the Exchequer: the *punitive*, you are not admitted to demand in more than one of these two courts, namely the King's Bench. Moreover, there is another sort of court in which in some cases you may demand the *punitive*, namely the provincial court — the *quarterly-sittings* justice of peace court: whether, after obtaining in this court the *punitive* remedy, you can take your chance for obtaining in one or other of the two metropolitan courts, the *satisfactive*, — say who can; never yet (it is believed) has the experiment been made. Moreover, from this *local* court, the suit may, without reason assigned, by means of a sort of a *crane* termed a *certiorari* (as per 244,) be raised up into one or other of these two higher and more expensive courts: and this, either by the author of the wrong, or by you — the party wronged.

265. Of this severance, by co-operation and a sort of tacit concert between Judge and Co. on the one hand, and the rest of the ruling and influential few on the other, — advantage was taken, to give additional strength to their power of exercising depredation, as well as oppression, at the expense of the subject many. By the high price put upon the chance of receiving the article at the hands of Judge and Co., the satisfactive remedy, in so far as not obtainable but by procedure in the *regular mode*, was effectually denied to the vast majority of these same subject and oppressed many. So far as dependent upon *law*, these that were unprivileged were thus laid completely at the mercy of the thus privileged classes, in all cases to which the application of the *punitive* remedy did not extend itself.

266. Dear, it is true, was the price; still, however, in the eyes of a large proportion of those to whom the privilege was thus granted, the advantage was and is worth the purchase. By each man the privilege is possessed, and, whether exercised or no, exercisable at all times, all his life long, and to a certainty: whereas the inconvenience of paying for it, namely by the expense of going to law, or being at law, — is a danger, the magnitude of which is, by each man's confidence in his own good fortune, concealed from his regards.

267. This being the imposed price, — how happened it that the intended victims were not deprived of the benefit of the punitive remedy, as well as of that of the satisfactive? Answer — This they could not be, without an all-comprehensive sacrifice of all security against wrong, — a sacrifice in which the sacrificers themselves, as well as the intended victims, would be included. To the security of the privileged classes it was necessary that not only they themselves should be preserved from depredation and oppression altogether, but that the unprivileged classes should be preserved, as far as might be, from depredation and oppression at the hands of one another: otherwise production would cease; and with the *subject-matter* of depredation, the *power* of exercising it. To this purpose it was therefore necessary, that application of the *punitive* remedy should, in a more or less considerable degree, be kept free from the clogs, by the strength of which the *satisfactive* remedy had been rendered unattainable to the unprivileged and devoted many.

268. How to effect the severance was however the difficulty. Of this difficulty, the primeval *penury*, brought to view at the outset of the full-length petition, had been certainly *one* cause: the want of sufficient discernment and talent, perhaps, another. Whichever were the case, so it happened that the machinery employed in the application of the *punitive* remedy, was no other than that employed in like manner upon the *satisfactive*: whence it happened, that the load of factitious delay and expense, laid upon the one, pressed also upon the other.

269. Without the fiat of a grand jury, for example, *caption* of the prisoner could not take place; and, except at the metropolis, no grand jury sat, but at the *assizes*: and the assizes were not held oftener than twice a-year in any county, nor than once in some counties; nor in any county did they last more than two or three days: and, suppose the *caption* effected, *trial* could not take place till the next assizes. What, as to offences, were the consequences? Abundant as they were upon the continent, criminal offences operating by force, were in England in still superior abundance. In the time of Henry VI., Fortescue, then chancellor, takes notice of this superiority, and makes it matter of boast. In the reign of Henry VIII. (as may be seen in Barrington's Observations on the Statutes) no fewer than 72,000 individuals suffered death by hanging, — about 2000 a-year upon an average: this, out of a population not half so great as at present.

270. Of the marriage of Queen Mary with Philip of Spain, one consequence was — the putting England, in this respect, upon a level with the continent. *Rome-bred* was the species of law, by which the continent was then, as now, principally governed: and, under Rome-bred law, persons accused of crimes might be apprehended *at all times*. By a statute of Philip and Mary, this power was given to justices of the peace. In the case of a criminal suit, thus was caption, with *commitment* accelerated: still *trial* remained at an undiminished distance. But, how inadequate soever to the purpose of deterring others, — commitment made in this mode would, of itself, so long as the incarceration continued, give effectual security as against future offences on the part of the same delinquent: for,

while a man is *in* jail, he cannot commit crime *out* of it. Sagacity neither was nor is wanting to perceive this incontestable truth.

271. With this arrangement, the contracting parties — Judge and Co. of the one part, and the rich and powerful of the other part — were, and continue to be, well satisfied. True it is, that upon this plan, this so regularly and uniformly applied lot of suffering of about twenty-six weeks, or fifty-two weeks, applied without regard to quality of guilt, is, — when, in consideration of quality of guilt, a few weeks, and not more, ought to be suffered, — applied in addition to those few weeks. True it is, moreover, that it is applied to the innocent who ought not to suffer at all. True it is, moreover, that all this while the innocent part of the thus forcibly *mixed company*, thus dealt with, are (as the phrase is) *contaminated*; and the guilty are occupied in contaminating as well as in being still further contaminated. "But what care I for all this?" says to himself noble lord or honourable gentleman; "none of it can ever fall upon me or any friends of mine. No danger is there of our being thus taken up, and if we were, we should be bailed of course. Then, as to the contamination, this could not be put an end to without innovation; and that would be out of the frying-pan into the fire. Besides, there is a satisfaction in having thus to talk of *contamination*: as it is the poor alone that are exposed to it, it gives a zest to the pleasure we feel in the contempt we pour upon them; it magnifies the great gulf which is fixed between them and us." Such is the almost universally established sentimentality and correspondent language in the upper regions: as if by far the most maleficent of contaminations were not that, which (as hath over and over again been demonstrated) in these same upper regions, and in particular, in the part occupied by Judge and Co. has its source.

272. Thus it is, that over and above the power of depredation, as well as oppression, which (from the nature of things) the rich and powerful, as such, unavoidably possess, at the expense of the poor and helpless, — they possess this vast additional power derived (how indirectly soever) from positive law.

273. By this confederacy it is, that the most powerful obstacle to law reform is constituted. Judge and Co. having, by the price put by them upon what is called *justice*, placed the satisfactive remedy out of the reach of all but the favoured few, — noble lords and honourable gentlemen run in debt, under the assurance of having it in their power to cheat creditors: and thus by the higher orders are the lower orders spoiled, as by the Israelites the Egyptians. So completely, by a mixture of pride and cupidity, is all sense of shame capable of being extinguished, that right honourable and noble lords have been heard to say, and without contradiction to insist, that for small debts, in this case, there ought to be no remedy. Why no remedy? Because affording a remedy against injustice encourages extravagance: as if, with this or any other encouragement that could be given to extravagance, the extravagant could ever be the majority; as if, without consent on his part, wrong in a pecuniary shape could not be done to a man in a variety of ways; as if dishonesty were not still worse than extravagance; as if, whatever were the amount, the loss of what is due *to* him were not a greater evil to any man, than the payment of what is due *from him* to another is.

274. In pursuance of this same policy, property, in a shape in which noble lords and honourable gentlemen have more of their property than in all other shapes put together, is exempted from the obligation of affording the satisfactive remedy — in a word, from the obligation of paying debts, while property in these other shapes is left subject to it. Noble lords or honourable gentlemen contract debts, and instead of paying them, lay out the money in the purchase of land: land being exempted from the obligation of being sold for payment, creditors are thus cheated. Noble lord's son is too noble, honourable gentleman's son too honourable, to pay the money, but not so to keep the land.*

275. For the like reasons, mortgages and other charges upon land are not to be, in an effectual way, by registration or otherwise, made knowable. Why? Because, if they were, money, of which it were known that if lent it would not be recovered, would not be lent; extravagance would thus be lessened; swindling, as above, would thus be lessened; and, in a country in which a man who is rich and not honest receives more respect than a man who is honest and not rich, — obtainment of undue respect for opulence not possessed would thus be lessened.

276. For *Device* XIV. — *Result of the fissure — Groundless Arrests for Debt.* — See the Full-length Petition.

277 or 80. *Supplement to Device* V. *Oaths necessitated.* (Full-length Petition, pp. 454 to 467. Abridged Petition, p. 516, art. 79.) — Consummation of the mass of evil shown to be produced by this device as above. By this one instrument, evil is capable of being produced, more than by all others put together. For by it, besides the evil produced by itself, eternity is capable of being given to the evil produced by all those others.

278 or 81. Even without this addition, sufficient for any ordinary appetite for the pleasure of maleficence, should be the power of the singly-seated absolutist. Infinite, however, is the addition, which the power of imposing oaths is capable of making to it.

* By 3 & 4 W. IV. c. 104 (29th Aug. 1833,) freehold and copyhold estates were rendered liable for simple and contract debts. — *Ed.*

279 or 82. Extirpation of all heretics — extirpation of all liberals, — conceive a Don Ferdinand, conceive a Don Miguel, bent upon procuring for himself these two gratifications — either of them, or, which would save trouble, both together:—for the accomplishment of these objects, added (suppose) the obligation of making re-application of those tortures, the application of which used to be common for some of these same purposes. — Nothing can be more easy. Two formularies for this purpose are already to be had from geography and history. He goes to work thus: An appropriate oath of the promissory kind is framed. All public functionaries take it: functionaries, administrational — judicial — military. All schoolmasters and schoolmistresses take it: they administer it — all of them — to their respective boarders and scholars. All husbands administer it to their wives: all parents, to their children, who by the form of it stand engaged to transmit it to their children, and so on to the latest posterity. Behold here a sort of *estate tail*, for the barring of which no *fine*, no *recovery* is available.

280 or 83. Dangerous enough in an absolute monarchy, of which there are so many examples, — it is still more dangerous under a pure aristocracy, of which there is one example, and under that composed of monarchy and aristocracy, of which there is another example. A monarch has caprices: an aristocracy has no caprices. By the monarch of the day, the oath imposed one hour, may be taken off the next hour. The oath imposed by the monarch of one day may be taken off by his successor — the monarch of the next day. Under an aristocracy, relief has no such chance. Long before the aristocracy-ridden monarchy of England had begun to lighten the yoke of religious tyranny on the necks of the Catholic subjects, Austrian monarchs had nearly removed it off the necks of their Protestant subjects.

281 or 84. To the *extent* of the evil produced by this instrument, addition may be made day after day: and, as to *duration* — if by it the existence of the evil can be secured for two days together, so may it be to the end of time.

282 or 85. Those, who are so fond of it, when employed, in giving support to their own sinister interests or prejudices, on one part of the field of law, — might do well to think, how capable it is of being employed against those same interests or prejudices, on another part of that same field. A radical, who wishes to see it continued to be employed against catholicism, should have considered how capable it is of being employed against radicalism. Against radicalism? Yes: or against any the smallest melioration in the form of the government.

283 or 86. Lord Castlereagh and Lord Sidmouth, when they enacted the Six Acts, should, after making a few more such acts — whatsoever were necessary to complete their plan — have taken this method of giving perpetuity to it. Without touching the invaluable *coronation oath*, an amendment tacked to it would have done the business at once. The heavier the yoke thus laid on the necks of the subject many, the more exquisite would then have been the tenderness of all royal consciences.

284 or 87. Will it be said — "No: formidable as the instrument is, the application made of it will never be carried to any such lengths?" Let him that says so, say — at what point it is that the application will be sure to stop. Let him say — at what point the appetite for power will be sure to stop. This point found, let him say — whether, after having reached that point one day, it may not go on the next.

285 or 88. Observations these — which, by their importance, may, it is hoped, atone for the irregularity committed by the insertion in this place given to them.

MORE ABRIDGED PETITION FOR JUSTICE.

To the Honourable the House of Commons; the Petition of the Undersigned,

SHOWETH,

1. THAT, so far as regards the law in general, and the constitutional branch in particular, the main object of attachment and veneration is — the law called *Magna Charta*, the earliest of all statutes now recognised as such; and upon occasion, as such it is spoken of by all legislators and all judges.

2. That although, in large proportion, the happiness of us all does in truth depend upon the degree of observance given to a certain clause of it; yet, in respect of that same clause, is this same fundamental law grossly, notoriously, and continually violated: violated by all judges who are styled *judges*, and that violation connived at by legislators.

3. That though, in and by this clause it is said in so many words — "To no one will we *delay*, to no one *sell*, to no one *deny justice*;" meaning by justice, judge's service — the sort of service performed by a judge as such: yet is this same *justice*, in all common-law, equity,

and ecclesiastical courts, wilfully *delayed* to all — *sold*, at a vast and extortious price, to those who are able to purchase it, — and *denied* to all those who are unable: in which sad case are the immense majority of the whole people.

4. That the sale, thus made of the service performed by a judge, was produced, and is continued, by the mode in which remuneration was made for such service: the matter of such remuneration coming out of the pockets of those by whom alone the benefit of such service was supposed to be reaped, and increasing with the number of the official operations, performed, or falsely said to be performed, — and the number and length of the written instruments framed, or falsely said to be framed, — on the occasion of such service: of which remuneration, each distinct portion so received is styled *a fee*.

5. That, setting aside the case in which he is paid (as by money in the shape of salary,) without prospect of increase of pay by length of time, — there are two modes in which a workman of any sort is paid for the service done by him, or supposed to be done: one is that in which he is paid for the quantity and quality of the *work* done, or supposed to be done; this is called payment by the job, and the work is called *job-work*: the other is that in which he is paid according to the *time*, during which he is occupied or supposed to be occupied in doing the work; this is called payment by the time, and the work is called *time-work*.

6. That, for letting in operations upon operations, and written instruments upon written instruments, and applications for enlargement of the time, — a proportionate quantity of *delay* has been and is made necessary: and here may be seen the sinister interest in which the factitious part of the delay has its source.

7. That, in whichsoever mode the payment is made, — where, in official service, there are masters and servants (styled superior and subordinate) occupied or supposed to be occupied in the same work, — there are two modes in which the benefit of such remuneration finds its way into the pockets of the superior — in the present case, the *judge*: one, according to which each fee is paid to himself; the other, according to which the fee is paid to the possessor of some office under him, of which he has the patronage; and that thus, it being the interest, and put into the power, so has it been and continues to be the practice, of judges — to raise to the utmost the price paid, by the suitors, for the service of the subordinates of these same judges.

8. That the same community of sinister interests, which, in the case of the official class of lawyers, has place between superiors and subordinates, has place between the whole of the official class and the whole remaining class (that is to say, the professional) their emolument being composed of payment made for service done, or supposed to be done, to their respective clients — the parties: the more suits the one class gets, the more suits the other gets; and the more money the one gets, the more money the other gets, upon each suit: and thus it is that, by the judges, to swell their own emoluments to the utmost, the suitors, who would be sufficiently vexed by the suit without being taxed, are taxed three times over: by payments to the judges, by payments to their subordinates, and by payments to the professional lawyers: the classes of whom are, for the same sinister purpose, multiplied without limit: and not only without use to, but greatly to the detriment of, truth and justice.

9. That, while thus benefiting themselves by the *sale* of justice, the same judges — by the same means — produce benefit to themselves by the *denial* of justice; for that, in so far as a judge saves himself from being called upon to perform his appropriate service, without losing money by so doing, — he obtains *ease*; and, as the total amount of the remuneration depends — partly upon the number of the suits, partly upon the amount of profit upon each suit, — and the number of the purchasers decreases as the price increases, — the price demanded will consequently *be* always as high as, without lessening the total profit, by lessening the number of the purchasers, it can be made to be. Here then, in the sale of what is called *justice*, as in the sale of *goods*, a constant calculation has, at all times, been carrying on; and, that the price is no higher than it is, is owing to this — namely, that if it were higher, more would be lost by the number of the persons *prevented* from being customers, than gained by the extra tax imposed upon those who *become* customers.

10. That thus, although in point of morality it *is*, and in point of law it ought to be *made*, the *duty* of a judge — to make the number of those to whom his service is rendered as great, and the service rendered to each as great, and as cheap, as possible, — yet so it is, that it having, as above, been made his *interest*, as well as put into his *power*, to render the number of those to whom his service is rendered as small, and the service rendered to each as small, and dear, as possible, — his interest is thus, by these arrangements, put into a state of opposition to such his moral duty: — opposition, as complete as possible.

11. That, in respect of *expense*, such is the effect of this sinister interest, that, where money or money's worth is the subject of dispute, — in the common-law courts, the least amount of the expense is, on each side, under

the most favourable circumstances, upwards of £30; while, in cases to a large extent, it amounts to hundreds of pounds, and in the equity courts to much more: and, by appeal from court to court, one above another, under different names, — it may be, and is, raised to thousands of pounds: in the equity courts to little if anything short of tens of thousands of pounds: and this in cases in which, under the only mode of procedure really conducive to, or aiming at, justice (of which mode presently) the suit would be heard and determined, without any expense in the shape of *money*, and at an inconsiderable expense in the shape of *time*.

12. That, in cases of *bankruptcy* and *insolvency*, matters are so ordered, that, — in a great, not to say the greater, part of the individual instances, — the persons among whom the greater part, not unfrequently the whole, of the effects are distributed, are — not the creditors, but the lawyers: — the lawyers of both classes: and, as if to thicken the confusion and increase the plunderage, — *insolvency* and *bankruptcy*, in themselves the same thing, are dealt with, by two different sorts of judicatories, — examining into the facts in two different sorts of ways, upon two different sorts of principles: every insolvent having moreover given to him the means of making himself a bankrupt.

13. That, in the courts called equity courts, matters are so ordered, that, when a fortune is left (for example to a female) by a last will, so it is that, in cases to a large extent, she cannot receive it, till it has passed through an equity court; and the consequence is that, if the fortune — say £10,000 — has fallen to her at a period of early infancy, and, upon the strength of it, she has made and received promise of marriage, — upon coming of age, when she should receive it, if at the end of eight years from the death of the testator, she has received so much as a penny for her subsistence, it is a favourable case for her: and, by an opponent, if he chooses to be at the expense, may this delay (as witness a trustworthy writer*), be "*doubled* or *trebled*:" the proceeds being in the meantime swallowed up by the judges and their confederates.

14. That, by intervals of *inaction* between one part and another of the same suit — intervals of from eighteen to one hundred and twenty days between term and term, and of six months or twelve months between assizes and assizes, — matters are so ordered, that, on the occasion of a penal suit, which, by proceeding as before a justice of the peace, would have been heard and determined in a few minutes, — the accused, guilty or innocent, is confined in a prison for six months or twelve months, there to linger, before the definitive examination called the *trial* is performed. Thus is produced the so-much-lamented *contamination*: a disease not least deplored by those to whose profit, and those by whose indifference, it is suffered to continue. All this while, if for a single moment injustice sleeps, why should justice? Even in sabbath time, if the God of justice forbids not the drawing of an ox or an ass, at that time, out of a pit, — with what reason can he be supposed to forbid the drawing an innocent man, woman, or child, out of a prison? or to forbid, for a moment, any operation necessary or conducive to the prevention, suppression, or punishment of crimes, or to satisfaction for the suffering?

15. That, in an equity court, an answer, — which, by proceeding as by a justice of the peace, might be brought out in the same minute as that which produced the question, — may be made to take five years or more to extract, — if he to whom it is put will distribute among the judges and other lawyers the price put upon the delay; and, in cases to a great extent, when the answer is thus obtained, all the use made of it is — the enabling a man to give commencement to another suit — a suit at common law: the common-law judges, — whatsoever question they allow to be put to a *witness* at the *trial*, that is to say, towards the *conclusion* of a suit, — not suffering any question to be put to a *party*, at the *commencement* of that same suit. And why? Even because, if they did, suits in large proportion would, in less than an hour, be each of them nipt in the bud; — these same individual suits, of which, in equity, the mere *commencement* may, as above, be made to last more than five years.

16. That, on pain of losing his right — whatsoever may be the value of that same right, — this is the course, which a man may be obliged to take, in order, for example, to put it to another man to acknowledge or deny his own handwriting: — this being the only course which can be taken, when no third person — who has seen him write, or in any other way is sufficiently acquainted with his handwriting, — can be discovered, and made to answer: common-law judges refusing to suffer any such question to be put, to any person who is a *party* to the suit: to insincerity thus scandalous, on the part of a suitor who is conscious of being in the wrong, affording in this way encouragement and reward.

17. That, on a proceeding before a justice of the peace, or in a small-debt court, the matter of *law*, and the matter of *fact* on which the *demand* is grounded, are brought forward at the very outset; and, in many if not most cases, the *evidence* in support of it at the same time: and so, either at that same time, or on as early a day as may be, it is, in regard to

* Cooper on the Court of Chancery, anno 1828, p. 91.

the *defence:* And here, if, in any *one* case, this mode of proceeding is, in a greater degree than any other that can be employed, conducive — not only to the exclusion of needless expense, delay, and vexation, — but moreover to *right decision*, — we humbly entreat the Honourable House to consider, whether it can be any otherwise in any *other* case.

18. That, in the common-law courts, — both in cases called *criminal* or *penal*, and in cases between man and man, called *civil*, — so lost are judges to all sense of shame, that not only do they carry on, but openly avow — yes, and in so many words — the practice of giving "decisions" *not grounded on the merits;* that is to say, of deciding contrary to justice: for, by a judge, how is it that justice can be contravened, or injustice committed, if it be not by purposely deciding otherwise than according to the merits? And to this dissoluteness is given the denomination, and the praise, of *strictness:* and, such is the blindness produced by the arts of delusion on the public mind, — that this abomination is, by non-lawyers, commonly supposed to be, because by lawyers it is said to be, necessary, or at any rate conducive, to justice.

19. That, accordingly, it is without scruple that they give one man's whole property to another man, for no reason than that some lawyer, official or professional, or some clerk in the employ of one or other of them or of some third person, has inserted, in some word, material or immaterial, in some writing, material or immaterial, a letter which is, or is said to be, a wrong one, — or has omitted a right one.

20. That, by the same means, and on the same pretence, and without any the least symptom of regret, they give, habitually and constantly, impunity to crime in every shape: the most mischievous and atrocious not excepted.

21. That, for example, it was but the other day, that a man, — who, beyond all doubt, had cut off the head of a child, was, at the instance of a judge, and for no other reason than that a word in a written instrument had been wrong spelt, acquitted: by which same means, with the approbation of all the judges, impunity may, at any time, by any man, in the situation of a lawyer's clerk, be given to any other man, for any crime: and, under favourable circumstances, the crime may be planned, and impunity secured to it, beforehand.

22. That this practice is the more flagrantly inexcusable, — inasmuch as, while it is carried on by a common-law judge, it is not carried on by an equity judge; nor, unless by accident, and in imitation of the bad example so set by superiors, is it, by a justice of the peace, or by a small-debt court.

23. That, on any occasion, the same judge, who on this or that former occasion has framed his decision on grounds contrary to the merits, declines, if he pleases, to pursue this course, and makes a merit of so doing: that, in this way, any set of these judges may, — under the direction, as usual, and in compliance with the will, of the chief, — give the thing in question — the estate or the money — to whichever of two men he pleases; by which means, without possibility of discovery, corruption to any amount may, on the part of judges in any number, have had place.

24. That, by all judges who are commonly styled *judges* — common-law judges as well as equity judges (not to speak of others who are not so styled,) mendacity, in one shape or other, is — openly, as well as habitually — licensed, rewarded, necessitated, and practised: and, by these same judges, by such mendacity, is filthy lucre knowingly and wilfully obtained.

25. That, by habit, to such a degree is all shame for the practice of so scandalous a vice extinguished, — that when a criminal who, conscious of his being guilty, confesses himself so to be, — the judge, as a matter of course, by persuasion purposely applied, engages him to declare himself *not guilty:* as if, supposing it desirable that other proof should be made, it could not as well be made without that lie as with it.

26. That, in like manner, what frequently happens is — that when, no one entertaining the least doubt of the man's guilt, he is accordingly by the jury about to be declared *guilty*, — the judge, by persuasion purposely applied, engages them to declare him *not guilty:* and — so wretchedly, by thoughtless excess in the punishment, has the law been contrived — the law, or that which passes for such — (meaning the common law in contradistinction to the statute law) — that, in the individual instance, more evil is perhaps excluded by abatement in that same excess, than produced by the immorality and the insubordination thus exemplified.

27. That, in common law, under the name of *judges*, and in equity, under the name of *masters* in chancery, — judges have been, and habitually continue to be, in the practice of exacting fees for operations never performed: for attendances (for example) never paid: thus adding extortion to fraud: at the same time, not merely admitting but compelling the lawyers of the parties to be sharers in the same guilt, thus multiplying the expense to the suitors, for the sake of the profit to the lawyers: — and this abomination — though brought to their view by evidence which they have caused to be printed, — the commissioners, appointed for the purpose of perpetuating, on pretence of abrogating, abuses, — have, together with the above-mentioned and so many other abuses, suffered to pass with-

out calling for its abrogation, — and without censure, or token of disapprobation.

28. That, under the system thus faithfully, howsoever imperfectly, delineated, — every man who is to a certain degree wealthy, has it completely in his power to ruin any other man who is to a certain degree less wealthy than himself: at the expense of a proprietor, — whether the property be in the possession of the one or the other, — gratification may thus be given by the wealthy man to his avarice: at the expense of any man, proprietor or non-proprietor, to his avarice, or to his groundless hatred or vengeance: the poorer the victim, the less time and money will the gratification thus afforded to the oppressor cost him: in the lawyers of all classes, and more especially in the judges, — on condition of distributing among them the requisite sums in the established proportions, — he will, on this as on other occasions, behold and find his ever-ready instruments.

29. That, accordingly, under such judges and such laws, security for whatsoever is most dear to man — property, power, reputation, personal comfort; condition in life, life itself — is an empty name: — witness, in regard to all real property, the printed declaration of an honest lawyer, whose name is so happily to be found on the list of the commissioners appointed to make report to the Honourable House on that subject. "No title" (says he in so many words,) at present, can be considered as perfectly "safe."* — and it is by the sinister interest herein holden up to view, that this, as well as the other portions of the law, have been brought to this pass.

30. That, to keep the door shut, as close as possible, against all endeavours to apply to that system of disorder and maleficence any effectual remedy, — pains are constantly taken, to induce the persuasion, that of all these disorders, the cause is to be found — not in human maleficence, but in the unchangeable nature of things: — but, in any such notion, what degree of truth there is, we leave it — after the exposure thus made, — we leave it to all men to imagine, and we humbly leave it to the Honourable House to pronounce.

31. That, should it be affirmed that this our humble representation is exaggerated, and in proof of its being so, should it be asked — how, if the provision made for the support of rights and exclusion of wrongs were no better than as above represented, society could be kept together; — should this be asked, the answer is — that it would *not* be kept together, but for three things: namely, 1*st*, The circumstance — that the man of law, though from delinquency in the shape of *fraud*, from which, in his view of it, he has little or nothing to fear, — he has more to profit than to suffer, — yet, as to crimes of *violence*, — under the impossibility of providing protection for himself without extending it to the community at large, — he feels it his interest to do more or less towards the exclusion of them; — 2*d*, The guardian influence of *public opinion*, under favour of that liberty, precarious as it is, which the press is left in possession of; — 3*d* and *last*, An expectation, — though produced by delusion in spite of experience, — that, on each occasion, will be done that which ought to be done, or something to the like effect: on which last account we cannot but acknowledge, that it were better the delusion should continue, were it not that it is not possible that the disorder should, any further than it is laid open, receive any effectual remedy.

32. Finally, in regard to the so often-mentioned *summary* system, which is of course represented by lawyers, and thence regarded by others, as having nothing but *dispatch* to recommend it; we humbly insist, and challenge them to disprove it, that, for rectitude of decision, and thence for giving execution and effect to the law in all its parts, — it is far better adapted — not only than the system styled *regular*, but moreover than any other that can be named.

33. We therefore humbly pray — that, with such extensions and other amendments as may be found requisite, — this same system of summary procedure may be universally established — a *judiciary* establishment, suited to the application of it, instituted, — and the system styled *regular* completely extirpated.

34. For further particulars of the grievance and the main cause of it, but more especially of the remedy, — we take the liberty humbly to refer the Honourable House to the forms of petition, intituled *Full-length Petition for Justice*, *Abridged Petition for Justice*, and *Petition for Codification*, — all bearing the name of JEREMY BENTHAM, who thereby has made himself throughout responsible for the correctness of the statements therein contained: and to those who cannot find time for the perusal, we leave it to imagine and say, — whether a man, by whom a life of more than fourscore years has been passed without spot, and more than sixty of them employed on works on legislation, which in every part of the civilized world are known and regarded with approbation, — would, on a subject and occasion of such importance, — in the face of that same world, lightly hazard any assertion without some substantial ground.

* Suggestions sent to the Commissioners appointed to inquire into the Laws of Real Property, by John Tyrrell, of Lincoln's Inn, Barrister: London, 1829, p. 168.

SUPPLEMENT,

WHICH MAY BE ADDED OR NOT TO ANY ONE OF THE THREE OR ANY OTHER PROPOSED PETITION.

SECTION I.

CORRUPTION — ITS IMPUTABILITY TO ENGLISH JUDGES.

1. CORRUPTION is generally spoken of as the *ne plus ultra* of depravity in a judge. By Englishmen, the English are commonly spoken of as forming, in respect of clearness from this stain, an honourable contrast with the judges of other countries. After reference made to what is above, we entreat those whom it may concern, and the Honourable House in more especial manner, to consider — whether, either corruption, or something still worse, is not, beyond dispute, with few or no exceptions, but too justly imputable to English judges. For — if *denial* and *sale* of justice, with *profit* by the amount of the sale, be not corruption, or something still worse, what is?

2. Like other trades, — the trade, which may with propriety be termed the *trade of corruption*, may be carried on — either in the *retail* or in the *wholesale* way: in the retail way, when it is at the charge of individuals only that it is carried on; in the wholesale way, when it is at the charge of hundreds of thousands and millions that it is carried on: by *sale* of justice at the charge of tens of thousands, with benefit in the shape of pecuniary *profit*: by *denial* of justice, at the charge of millions, with benefit in the shape of *ease*.

3. By the word *corruption*, only in that which has just been styled the *retail* mode is the thing itself commonly brought to view. In this case, the conception formed of the magnitude of the evil produced, is naturally much exaggerated. Cause of the exaggeration, this: In so far as carried on in the *retail* mode, whatsoever intercourse has place on the occasion is of course carried on in secret: by the secresy, suspicion, and *that* on the most incontestable grounds, is excited; facts, though it were in small number, transpiring by accident, — especially when other persons of note are concerned in them, or affected by them — suffice to produce in the public mind the conception — that the instances in which it has place are much more numerous than in reality they are. Under governments, and in judicatories, in which means of corruption, producing profit by money or money's worth received in the direct way, have place, — the probable number of these instances is not very great. Why? Because in this case the receiver must put himself in the power of the giver: and because a proposed giver will not, without such a sum in his hands as will (he thinks) suffice to outweigh the fear of the risk in the mind of the judge, incur the risk of being delivered over to punishment by that same judge.

4. In a direct way in the shape of money, small indeed, comparatively speaking, is the probability, that, on the part of an English judge, corruption should have place. Why? Because, so far as concerns reputation, — by a judge, a bribe could not be *received* in a *direct* way without his putting himself, as above, in the power of the *bribe-giver*. But, *indirect* ways there are, in which no such danger has place: — where, for example, it is not the judge, but a connexion of the judge's, that receives the benefit in question; — and *that* from a connexion of the *party*; especially if it be in the shape — not of money, but, for example, of a lucrative office, or a lucrative bargain.

5. Note here, that on the part of a judge, as on the part of any other man, — where, in this or any other shape, *misconduct* has place, — the amount of the evil in *all* shapes taken together being given, it matters not what has been the *motive*. In the case of a judge, — besides *self-regarding* interest in respect of money or money's worth at the hands of individuals, — temptations to the operation of which his *probity* stands exposed, are — *self-regarding* interest in respect of desire of the matter of good in that and other shapes, at the hands of government, together with *sympathy*, and *antipathy* as towards individuals or classes of any sort, — on whatever account — private or public. Now then — to corruption, — (if corruption is the name to be given to misconduct otherwise than from blameless misconception) — to corruption in the *retail* mode, from all these sources, the probity of the judge stands more or less exposed, — in all countries, and in all judicatories. Why? Because, by all these efficient causes, misconduct, in any shape, may, on the part of a functionary, in that as in any other situation, be made to have place, without need of intercourse with any other individual; and this, unless circumstantial evidence be received as sufficient, without possibility of its being, for the purpose of censure, proved either in a legal tribunal, or even in the tribunal of public opinion.

6. Thus it is, that, in respect of corruption, carried on by functionaries in all situa-

tions in the *retail* mode, England is not much otherwise than upon a footing with other countries: while, in respect of the corruption trade, carried on by judges in the *wholesale* way, as above, she is altogether unrivalled.

7. Without any the smallest fear of punishment, — without even any considerable fear, if any at all, of any such disrepute as he is capable of being influenced by, — an English judge, on a question in which the ruling one or the sub-ruling few are supposed by him to take an interest, may commit injustice to any amount in favour of that side: without danger of any *such* disrepute, for two reasons: — 1. Because, at the hands of all with whom he is in the habit of passing his time, or is in any particular way connected, — instead of disapprobation, approbation is the sentiment he will make sure of experiencing; 2. Because, in the situation of a judge, — partiality in favour of that side is so general, not to say universal, and is the result of influence notoriously so irresistible, that, on the part even of those who suffer by it, slight is the degree of disapprobation which it calls forth: a mere nothing in comparison of that which would have place, if it were by hard money, to the same value, that it was produced.

8. In the case of an alleged *libel*, for example, against a government functionary, as such, — what man is there that ever expects, that the chief-justice will fail to do his utmost to procure the conviction of the alleged libeller?—or, on the prosecution of a justice of peace, to screen him from punishment? If *indictment* be the mode, the jury will be directed accordingly; if *information*, the impunity will, as far as possible, be conferred at an earlier stage: — the *rule* will be refused: the established maxim about *motives* — (no conviction without *proof* of a corrupt motive) — being of itself equivalent to a statute law granting impunity to every abuse of power on the part of every individual placed in that same office. A justice of peace, supposing it possible that punishment be his desire, would not be indulged with it: for, by the example of *his* punishment, delinquency on the part of others — 4000 and more, acting in that same office — might be more or less checked: not to speak of official men, in other offices, whether below him, on a level with him, or even above him. In as far as in that office a man is deterred from abuse of its powers — it is by fear — not of conviction (a disaster to which he does not stand exposed) but of *prosecution*; to which, whatsoever can be done for him, he cannot but remain exposed, at the hands of any such adequately opulent individuals, in whose breast *resentment* has so far got the upper hand of *prudence*.

9. As to *incorruptibility* and *independence*, — under Matchless Constitution, every judge is, on every occasion, acted upon by that same matter of corruption, of which the fountain springs from behind the throne: he alone excepted, who for himself has nothing to wish for, nor has relation, friend, or enemy. What then, but either deceiver or deceived, can any be, by whom, in the situation of an English judge, any such quality as *independence* is said to have place?

Two laws — *made*, both of them, by these same judges who "never make any law," — two laws — either of them, much more both of them together (not to speak of the fullest assurance at the hands of legislators, of which presently,) suffice to keep banished from the mind of an English judge, all apprehension of punishment, in any shape, for anything done in the exercise of his power. One is — that which enables a public man, to whom misconduct is imputed, to bring down punishment on the head of the imputer, without exposing himself, on that occasion, to any such unpleasant accident, as that of hearing the truth of the imputation proved, out of the adversary's, or any *other* mouth: the other is, that which preserves him from the still more unpleasant accident of hearing it proved out of *his own* mouth.

Where the procedure is by *information*, true it is — that, in some instances, the court has refused to grant what is called *the rule* (namely, the rule by which it is suffered to go on,) without an *affidavit* denying the truth of the imputation. But, for preserving an *oppressed* complainant from being punished instead of the *oppressor*, what would this practice do, were it ever so sure to be adhered to? Just nothing. Whether any judge, whose pleasure it has been to receive a bribe, will have received the bribe-giver, with a third person in his hand, to bear witness of the transaction, may be left to be imagined: and, without such third person, the evidence of the bribe-giver will go for nothing; for, forasmuch as to conviction in case of perjury, two evidences are made necessary, a licence is thereby granted to every person to commit perjury, wherever no evidence, in addition to the testimony of *one* witness, has had place.

But, suppose an extraordinary case: similar or other evidence, not only in existence but obtainable, on the strength of which it is possible that conviction may take place: how stand the relative situations of the parties? Against conviction of the doubly guilty functionary, guilty of the original oppression or depredation, guilty of the perjury committed for the purpose of transferring all punishment from the injurer to the injured, the chances are several to one: while, to the oppressed or plundered accuser, or other prosecutor, punishment is applied to a certainty: punishment, that is to say, pecuniary punishment, and this to an amount not ascertainable beforehand; but frequently not less than some hundreds of pounds. True it is, that, in this case, not *punishment* but *costs* is the

name given to it: but whether, by this change of denomination, any abatement be made in the suffering produced by the thing denominated, may be left to be imagined.

True it is again — a mode there is, in which, if a judge, or any other functionary, or any other person by whom oppression, depredation, or any other crime, has been committed, wishes to see it exposed to public view, — he is at liberty to put in for the indulgence: this is the mode by *action:* for in this case the alleged libeller — the defendant — is left at liberty to prove the truth of the imputation; which, if he does, the criminal, whose guilt has thus been proved, obtains no *damages*, and perhaps pays *costs*. But, somehow or other, a desire of this sort is not very commonly entertained.

Not that in all cases the guilt of the prosecutor is thus demonstrated by the mode of prosecution chosen by him. For where, as in the cases of *indictment* and *information*, the suit is of that sort in which punishment is applied under the name of *punishment*, to the *author* of the injury, — and no *compensation* given directly and avowedly to the *sufferer* by the injury, — in this case, the testimony of the sufferer is admitted; and not only so, but as capable of being taken for sufficient, without corroboration from any extraneous evidence. But, in the case in question, extraneous evidence, and *that* adequate, never can be wanting. It is given by every man, by whom a copy of the alleged libel has been purchased.

Accordingly, if any such criminal act is imputed to a man: to any man, and in particular to a judge, — he will proceed by one sort of suit or another, according as he is guilty or not guilty. If not guilty, he proceeds by action: if guilty, he proceeds by indictment or information; by information — either in the ordinary way, or by information in the *ex officio* way: in the *ex officio* way, that is to say, by the mere act, if obtainable, of the attorney-general, without application for leave, made in public, to the court. This being the case, — if it be in any one of these three last-mentioned ways that he proceeds, — to what a degree he exposes his character to suspicion, not to say gives it up, is sufficiently obvious.

SECTION II.

OTHER SOURCES OF OPPOSITION TO LAW REFORM.

1. If it be of use, that, in the situation of judge, the opposition of interest to duty under the existing system should be held up to view, — not less so can it be in the case of those, by whom the conduct of all judges is determinable.

2. On this occasion may be seen two conflicting interests, by which the minds of legislators are everywhere operated upon: legislators, and the ruling few in general: to which class belong of course the judges; whose case comes, on this account, a second time under consideration; of these same conflicting interests, the one acting in accordance with the official duty, the other in opposition to it.

3. First, as to duty in respect of the main end of justice: namely, maximization of the execution and *effect* given to the several existing laws, by whomsoever made. To the legislator for the time being, if to anybody, belongs assuredly this duty, in the character of a moral duty: necessary to the fulfilment of which (as there has so often been occasion to observe) is prevention, not only of *misdecision*, but of *non-decision*, where, and in such sort as, *decision* is necessary to the production of that same *effect:* so likewise in respect of the *collateral* ends of justice; namely, minimization of expense, delay, and vexation.

4. Thus much for *duty*. But, as to *interest*, unfortunately, in the breast of the legislator, as well as in that of the judge as such, — against that interest which is in accordance with duty, fight other interests which stand in opposition to it. Interests in accordance with duty, those which belong to him, in common with all other members of the community; interests in discordance with and in opposition to duty, all those which, being peculiar to the few, cannot be promoted but at the expense of those of the other members of that same community; in a word, of the *subject-many*.

5. So much for conflicting *interests:* now for *law*. In the aggregate body of the laws, some there will always be, by which the promotion of the interests of both sections — that of the subject-many, and that of the ruling few — will have been endeavoured at, and in a greater or less degree compassed: others again there will be, by which the interests of the ruling few will be promoted, or be endeavoured to be promoted, at the expense of those of the subject-many: others again by which the interests of the subject-many will be promoted, or be endeavoured to be promoted, at the expense of the particular interests, or supposed interests, of the ruling few.

6. So much for legislators at large. Enter now in conjunction such of them as are lawyers, and lawyers at large, official and professional, both in one, and professional at large; looked up to, all of them, by legislators as their advisers. These being the only persons, who can so much as profess to have any general acquaintance with the law as it is, — thence it but too naturally comes to pass — that, as often as any proposal for the

melioration of the system is brought forward, — the opinion by *them* declared is, as of course referred to, as that on which the determination respecting acceptance or rejection shall be grounded. But, it being in the highest degree their interest that it shall be in a state as opposite to the interest of the people, in respect of the above-mentioned ends of justice, as possible, — and, whatever it be, as little known as possible, — of course, so it is, that supposing any such change proposed, as affords a promise of rendering it conformable to the ends of justice, whatever knowledge each man possesses is applied — not to the promotion, but to the prevention of it; prevention of it — by any means and in any way; in an open and direct way, or in a disguised and indirect way; in particular, by the promotion of such narrow improvements, apparent or even real, so they be — either by unadaptability, or by their narrowness and the consequent length of time requisite for their establishment, — obstructive of all adequate as well as beneficial change.

7. Accordingly, when a plan has been brought forward, having for its object the establishment of an all-comprehensive, uniform, and self-consistent rule of action,—conducive, in endeavour at least, in the highest degree possible, to the happiness of the whole community, taken together,—and this at the earliest *time* possible,—little less than universal have been the anxiety and the conjunct endeavour to frustrate its design. For this purpose, silence, being at once the most commodious, and the most efficacious, has been the means generally resorted to: the most efficacious; forasmuch as by declared opposition, attention would be drawn to the subject, and to the validity of the arguments *in favour* of the plan; and the futility of the ablest and strongest arguments capable of being brought *against* it, would be the more extensively perceived.

8. Hence it is — that, under the existing system — while, on the part of judges, not only acts of wilful omission to give execution and effect to the law have place, but acts are committed, by which the authority of the will declared by the legislature is avowedly overruled, — so perfectly undisturbed is the tranquillity manifested by legislators. In cases, in which no particular detriment to the particular interests of the ruling few is perceptible, as plenary as can be wished is the indulgence: in these cases, these hired servants of the law are left to obey it or break it, as is most agreeable to them.

9. Parliament enacts one thing: equity rules, or acts, the opposite thing. The Earl of Mansfield, ablest as well as most zealous absolutist that, since the aristocratical revolution, ever sat upon an English bench, — had for use a word admirably adapted to this purpose. According to him, statutes, singly or in any number, were, on each occasion, to be taken in hand and *moulded*.

10. Thus, on a *common-law* bench: and, in equity, the Earl of Eldon, though without the use of the word, was not backward in declaredly following the example.* As for apprehension, no very strong sensation of this sort could reasonably be entertained, by a Lord Eldon, sitting in his court of equity, of the same Lord Eldon sitting in judgment on his own conduct in his House of Lords. Now, for above these four years, has indication of this mode of ruling, by vigour, over the law, been before the eyes of the public. There it is; and who cares? Just as much the Tories out of place as the Tories in place.

11. Connected with this prominent and undeniable interest, may be seen another particular and sinister interest, which, though so much less extensively shared, will, by its latentcy, and the consequent appearance of disinterestedness, naturally operate, in the sinister direction, with still greater force. This is the interest of the *ex-lawyer*. Interest affected, and feared for, by the lawyer in office or practice, pecuniary interest: interest affected, and feared for, by the ex-lawyer, interest created by regard for reputation, reputation of appropriate wisdom. Well-grounded altogether is this fear, it must be confessed: for, proportioned to the acknowledged beneficialness and extent of any such beneficial change, will be sure to be the real folly which has all along been covered by the veil of apparent and boasted wisdom. Occupied — first in the study of this system, then in the acting under it, and all along in the magnification of it, the labour of a long life, — and now, after all, and all at once, a compound of mischievousness and absurdity is found to be the character of it! What a shock to vanity and pride!

12. Not merely in proportion to the change effected, but as soon as the change is determined upon, will the sad sensation be produced. Ill-gotten wealth and power excepted, all that the great man has been accustomed to be valued upon, or to value himself upon, vanished!

13. In the train of these sinister *interests*, come *interest-begotten prejudice*, and *authority-begotten prejudice*. But of these sources of opposition to whatsoever is at once useful and new, — in one place or another, so continually recurring, has been the need, — and, with the need, the act, — of making mention, — that every further mention of them *here* may well be spared.

14. Such being the exposure made of the opposing causes: now for its practical uses. Uses of it may be seen two: — One is, showing, that, taking the existing system all toge-

* Indications respecting Lord Eldon.

ther, no proof of its fitness to exist is declarable from its having thus long been in existence.

15. The other use is—showing, that against no one distinguishable article of the here-proposed system, or of any proposed system, — to any declared opinion of any individual belonging to any one of those same classes, so far as it seeks to operate in favour of the existing system, should any weight be attributed — any regard be paid. On the contrary, it should be looked upon as an argument in *favour* of that system to which the opposition is made: in favour of it, and for this reason. With this subject, as with every other, the better acquainted a man is, and the greater his appropriate ability, the better able will he be to bring forward whatsoever relevant arguments in support of his declared opinions the nature of the case affords: and the stronger the reliance placed by him on the effect looked for from his mere opinion, the stronger the evidence of the consciousness of the depravity of the system, and the weakness of all arguments producible in favour of it.

16. To conclude. In this state of things, if, from the pressure of the enormous and perennial load of misery, from which relief is hereby endeavoured to be obtained, any such relief is to be expected, — it must be at the hands of one or other of three distinguishable descriptions of men in the situation of legislators: one, in which a sense of moral duty has place, and that same sense strong enough to constitute an effective cause of action: another, that to which it appears that its own particular interest is so bound up with the general weal, as to have more to gain than to suffer, from the substitution of the good system to the bad one: the third and last, that in which a salutary fear, in sufficient strength, has place: the fear, lest, wearied by the oppression, and enlightened at length by the information received, as to the causes and the authors of it, — the subject-many should, in sufficient number, concur in doing for themselves what ought to have been done for them, and in so doing cease to exhibit that compliance, by, and in proportion to which, all power is constituted.

Still, before this Supplement is concluded, a few more articles, particularly the fifth and last of them, may, it is hoped, be found not altogether without their use. As to the third and fourth, exhibiting impunity given to murder, and right trampled upon — both without the shadow of a reason — the practice is of such continual occurrence, that these instances of it would not have been inserted, but that, at the moment of sending off the matter to the press, the memorandums made of them happened to present themselves to view.

1. *Applying to Device* III.—*Written Instruments were worse than useless, necessitated.*

From the *Examiner* for 30th November 1828:—"An action has been brought against the 'select' (of St. Giles's and St. George's, Bloomsbury) to try their title; £200 were therefore abstracted from the funds raised for the support of the poor, and thus stimulated, his (the solicitor's) industry was extraordinary, for he put in fifteen special pleas covering the surface of 175 folios! On Tuesday-week, however, the Court of King's Bench *reduced* the number more than one half,* and thus the select have incurred personally the needless and vexatious expense to which they resorted for obvious purposes."

2. *Applying to Device* V. — *Oaths, for the establishment of the Mendacity System, necessitated.*

From the *Windsor Express*, August 2, 1828: — "At the Manchester quarter-sessions, a woman was arraigned for stealing a shawl from a child in the street. A little boy was brought forward to give evidence of the fact; instead of being suffered to do this, however, the chairman examined the child as to certain theological doctrines. After the child had said he knew it was a bad thing to tell lies, the chairman said, do you know what becomes of those who tell lies? 'No, I don't.' Chairman: 'Do you ever say your prayers?' 'Yes, I said my prayers once.' Chairman: 'And what prayer was it you said?' 'I said Amen.' Upon this the chairman refused to receive his evidence, and the woman was set free."

3. *Applying to Device* XI. — *Decisions on grounds avowedly foreign to the Merits — Exemplification of the Crime-licensing System.*

From the *Windsor Express* for July 19, 1828:—"At the present Berkshire assizes, a woman was charged with murdering her child by wilfully suffocating it. Before any evidence, counsel submitted that the woman must be acquitted of this murder, *because at the coroner's inquest, the name of one of the jurors was stated to be Thomas WinterBorne, instead of Thomas Winter Burn.*

"Mr. Baron Vaughan — 'I cannot hold that Borne and Burn are the same name, and *I am clearly of opinion* that this objection

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* In the reduction thus made, may be seen a sample of the sort of law reform, which, were the matter left to them, would be established by Judge and Co. As to the *reduction* made in the gibberish, — what was the reduction made by it in the expense, or what the expense of the *application* made for the reduction? and therein, of the *saving* to the parties from these reductions, what was the *net* amount?

puts an end to the case.' The prisoner must be discharged."

"Another case occurred on Tuesday in the King's Bench. Fisher *v.* Clement. It came out during the trial that the defendant, who had been found guilty in the Common Pleas, was allowed a *venire de novo* by the King's Bench, *because* in one of the counts in the declaration, the words 'of and concerning' had been omitted."

4. *Applying to Device* XIV. — *Groundless Arrest for Debt.*

From the *Examiner* of 11th January 1829, page 28:—"The *rules* embrace a suburb, immediately adjoining the King's-Bench prison, of a circumference of about from two to three miles, and containing about six miles of open roads and streets. This advantage to debtors is somewhat similar to that accorded to prisoners of war on their *parole d'honneur*, with the exception, that, in this instance, the law fixing the marshal for the debt of his prisoner whenever the latter shall be found without the limits of 'the rules,' that officer very properly takes care to receive sufficient security. It is by the privilege of granting 'the rules' to prisoners, that the marshal realises the greater portion of his income, which is said to amount in the gross, to from £10,000 to £20,000. The charge for the rules is in proportion to the amount of the debt, the rate demanded being £8 for the first, and £5 for every other £100 of the detainers lodged against a prisoner. The bonds are also prepared in the marshal's office, and leave their profit in his pocket. — *King's-Bench Gazette.*"

The patronage of this office, whatever may be the emolument of it, being in the hands of the chief-justice of the King's Bench, as the patronage of a living is in the hands of the proprietor of the advowson; and it being thus his interest, that oppression and depredation, at the charge of men thus under affliction, should, in proportion as any increase in the amount of the emolument is the result, be screwed up to the highest pitch possible, — these things considered, what regard can be due to the *ipse-dixit* authority of anything which, by a man in *such* a situation, is ever said in favour of the existing system, may be left to be imagined.

5. *Applying to Device* XIII. — *Jurisdiction split and spliced: Abridged Petition, article* 262.

Not by any means a matter of indifference is, in this case, the appellation employed. To many a functionary, by whom, as such, the power of a judge is exercised, the appellation of *judge* is not wont to be applied. Instance, a *justice of the peace.* Mind now the advantage taken of this circumstance, for the never neglected purpose of excluding, from the practice of judicature, the light of publicity, and thence the only check, to which in various situations — and more especially in that of a judge who is styled *judge*, — power, otherwise completely arbitrary, stands exposed. Speaking of the judicatory of the sort of judge styled a *justice of the peace*, in the cases in which he acts, or may act, without any other with him, — so shameless have been judges of the sort styled *judges* — to such a degree shameless, as to declare — that it is *not* a *court of justice:* and that this being so, he who presides is not under the obligation of carrying on the business otherwise than *in secret.* Is *not* a court of justice? What then *is* it? A court of injustice? This it must be, if anything; unless between the one and the other a medium can be found.

Other instances have been afforded by the sort of judge styled a *coroner*, who presides in the judicatory styled *the coroner's inquest.* To what purpose, unless it be that of sharing in the privilege of giving impunity to past, and thereby encouragement to future murder, possessed and exercised, as above, by judges styled judges?

Behold here an example, of the way in which the judge-made law styled *common law* is made. King, Lords, and Commons, altogether, would they dare do any such thing?

6. *Applying to almost the whole constellation of Devices.*

Under the Mosaic code, justice was administered at the city *gates.* Why at the *gates?* Even because *there* was the greatest affluence of passengers: affluence — not of paid, but of gratuitous observers, and thereby *inspectors*, on the principle above submitted to the Honourable House. Of factitious expense or delay, in no shape, under that system, is any trace visible. Exclusion of parties from judges' presence — unintelligible-language — useless written instruments — subornation and practice of lying — cessation of judge's service for six months and twelve months together — blind fixation of times for judicial operations — mechanical, substituted (as hath been seen) to mental judicature — useless transference in bandying: add — transference of suits from judicatory to judicatory — decision on grounds avowedly foreign to the merits — jurisdiction, when it should be entire, split and spliced, — of any one of all these abominations, not a vestige visible.

Whence, now, this difference? Whence, but that the God of Moses was the God of Justice; the God of Judge and Co. the Demon of Chicane.

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7. October the 3d, 1829: one more last word: *facit indignatio verbum* — indignation, called forth by the occurrence of the moment,

has produced it. But, the *very* last word this must be: for, if the like cause were constantly productive of this same effect, never would this publication find its close.

8. Two guineas for one minute occupied in bearing a part in the useless and mischievous ceremony—the swearing ceremony! Fees to this amount extorted by a Master *(ordinary)* in Chancery, for a business, which, by a solicitor arrayed in the title of MASTER EXTRAORDINARY, is done for half-a-crown! Five guineas to the same extortioner for the bare *receiving* of a paper styled *an answer*: besides travelling expenses for a useless journey of from six to twenty miles.

9. Plunderage, to these amounts, extorted, or endeavoured to be extorted, from *paupers*, whilst in *prison!* — in prison, — during life. And for what? For no less a crime (it is true) than that of *rebellion*. But, the proof of it is — what? No other than the inability to pay costs: the costs, all factitious; tares, sown by the demon of chicane; crops, for the sowing and gathering in of which, the courts of iniquity, so miscalled *courts of equity*, are kept on foot.

10. Of this same eventually intended life imprisonment, in one case seventeen years already passed. Of this case, with six other similar ones, the disclosure produced by a visit to the Fleet prison; namely, the visit, forced from the foremost of the *anti-codificationists*, and anti-reformists in all shapes, in Honourable House — the new solicitor-general — imported into it, with his minute scraps of reforms and sham reforms, for the special purpose of keeping the door shut against all adequate ones.

11. Behold the letter written by him — written to one of the victims of the oppression: giving him the assurance, that it would be "his own fault" if he continued to be thus oppressed. Behold in this letter a genuine English lawyer's sermon, on the text — "I was in prison, and ye visited me."

12. "Woe unto you, lawyers! for ye have taken away the key of knowledge: ye entered not in yourselves, and them that were entering in ye hindered," Luke xi. 52. Read this, ye anti-codificationists!

13. "Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye touch not the burdens with one of your fingers." Read this, ye fee-fed delayers, deniers, and sellers, of what ye call *justice!*

14. The power, given to judges by Lord Eldon and Mr. Peel — the power of imposing, on the indigent and already afflicted, taxes without stint, putting the produce into their own pockets — this power has already been over and over again held up to abhorrence; and, on each occasion that seems favourable, will be so again, as long as any blood remains in the hand which gives motion to this pen. Of the purpose and use of the creation and preservation of this *power*, this case presents an exemplification. And this is called *government!* — and this is called *justice!*

15. *Rebellion*, forsooth? "*Durum est*," says a maxim of their own — Oh yes! — *durum* enough — durum est torquere leges, ad hoc, "ut torqueant homines."

> To torture men, the tyrant words distorts:
> These are the fee-fed lawyer's cruel sports.

16. Of these sham convictions of *rebellion*, — if persevered in, with the practical consequences deduced from them, — what more apposite requital than a real and successful one?*

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* Seen, for the history of this business, have been the documents following: —

1. Account of the Solicitor-General's visits to the Fleet prison on the 11th and 12th: headed CHANCERY REFORMS.—*Morning Chronicle*, 15*th September* 1829. "From the British Traveller."

2. Account of these same visits: one of seven cases mentioned in the above, the last four omitted.—*Morning Herald*, 15*th September*; headed CHANCERY REFORMS, Visits, &c. "From the British Traveller."

3. Article, headed CHANCERY REFORMS, CONTEMPTS OF COURT. — *Morning Herald*, *September* 17*th*.

4. Masters in Chancery — their charges. In a letter signed, A Solicitor. Article headed CONTEMPTS OF CHANCERY. — *Morning Herald*, *October* 2*d*.

5. Article headed "CHANCERY PRACTICE. The Solicitor-General and the rebel Pickering," containing a bill of costs. — *Morning Chronicle*, *October* 3*d*.

Not seen, the British Traveller — the original source of the information on this subject.

☞ A beneficial exemplification of public spirit would be a republication of the above matter in a cheap form.

PETITION FOR CODIFICATION.

THE PETITION OF THE UNDERSIGNED,

Humbly Showeth, — That, in so far as our respective consciences will allow, we entertain the sincerest disposition to conform ourselves in all things to the good pleasure of those who are set in authority over us.

That when, by any of us, a wish is expressed to know what that pleasure is, he is bid to look to *the law of the land*.

That, when a man asks what that same law is, he learns that there are two parts of it: that the one is called *statute law*, and the other *common law*, and that there are books in which these same two parts are to be found.

That, when a man asks in what book the *statute law* is to be found, he learns that, so far from being contained in any *one* book, howsoever large, it fills books composing a heap greater than he would be able to lift.

That, if he thereupon asks, in which of all these books he could, upon occasion, lay his hands, and find those parts in which he himself is concerned, without being bewildered with those in which he has no concern, — what he learns is — that the whole matter is so completely mixed up together, that for him to pick out the collection of those same parts from the rest, is utterly impossible.

That, if he asks in what book the *common law* is to be found, he learns that the collection of the books in which, on each occasion, search is to be made for it, are so vast, that the house he lives in would scarcely be sufficient to contain it.

That, if he asks who it is that the statute law is *made by*, he is told, without difficulty, that it is by King, Lords, and Commons, in Parliament assembled.

That if, in continuation, we proceed, any of us, to ask who it is that the common law has been made by, we learn, to our inexpressible surprise, that it has been made by nobody; that it is not made by King, Lords, and Commons, nor by anybody else: that the words of it are not to be found anywhere: that, in short, it has no existence; it is a mere *fiction*; and that to speak of it as having any existence, is what no man can do, without giving currency to an imposture.

When, upon observing that, by every *judge*, it is spoken of as a reality, and that he professes to be acting under it, we ask whether it is not *he* that makes it? we are told, that this is what no judge ever does, and that, by any of the learned judges, a question what part of the law is of his making, would be received with indignation, and resented as a calumny.

That when, seeing men put to death, and otherwise grievously punished by order of judges, a man asks by what authority this is done, he learns that it is by the authority of statute law or common law, as it may happen: and if he thereupon asks whether, when it is upon the authority of the common law that the judge does this, it is not by this same judge that this same common law is made, he still receives the same assurance — that no judge ever makes law, and that a question what part of the law is of his making, would be received with indignation, and resented as a calumny: while the truth is — that, on each occasion, the rule to which a judge gives the force of law, is one which, on this very occasion, he makes out of his own head: and this — not till the act for which the man is thus dealt with has been done: while, by these same judges, if the same thing were done by the acknowledged legislature, it would be spoken of as an act of flagrant injustice, designated and reprobated, in their language, by the name of an *ex post facto* law.

All this while, we are told that we have *rights* given to us, and we are bid to be grateful for those rights: we are told that we have *duties* prescribed to us, and we are bid to be punctual in the fulfilment of all those duties; and so (we are told) we must be, if we would save ourselves from being visited with condign punishment. Hearing this, we would *really* be grateful for these same *rights*, if we knew *what* they were, and were able to avail ourselves of them: but, to avail ourselves of rights, of which we have no knowledge, being in the nature of things impossible, we are utterly unable to learn — for what, as well as to whom, to pay the so-called-for tribute of our gratitude.

As to these same *duties*, we would endeavour at least to be punctual in the fulfilment of them, if we knew but what they were; but, to be punctual in the fulfilment of duties, the knowledge of which is kept concealed from us, is equally impossible. That which is but too possible, and too frequently experienced by us, is the being thus punished for not doing that which it has thus been rendered impossible for us to do.

Thus, while the rights we are bid to be grateful for are mere illusions, the punishments we are made to undergo are sad realities.

Finally, thus it is that we, who, in so far as such oppression admits of our being so, are

his Majesty's dutiful and loyal subjects, are dealt with as were the children of Israel under their Egyptian taskmasters.

We hear of tyrants, and those cruel ones: but, whatever we may have felt, we have never heard of any tyrant in such sort cruel, as to punish men for disobedience to laws or orders which he had kept them from the knowledge of.

We have heard much of cruelties practised by *slaveholders* upon those who are called their *slaves*. But, so far as regards the mode of treatment we thus experience, — whatever be the cruelties practised upon *them*, never have we heard this to be of the number of those cruelties. The negro, so long as he does what he is commanded to do, and abstains from doing that which he is forbidden to do — the negro — slave as he is, is safe. In this respect, his condition is an object of envy to us, and we pray that it may be ours.

We have heard not a little of the pains taken by the Honourable House, in the endeavour to put an end to those same cruelties. We cannot refuse to any such endeavour the humble tribute of our applause. But we hope we are not altogether unreasonable in our wish to receive, from the hands of the Honourable House, the benefit of the like endeavours.

That which, for this purpose, we have need of (need we say it?) is a body of law, from the respective parts of which we may, each of us, by reading them or hearing them read, learn, and on each occasion know, what are his *rights*, and what his *duties*.

The framing of any such body of law cannot indeed but be a work of time. This is what we are fully sensible of. But the sooner it is begun, the sooner will it have been completed: and the longer the commencement of it is deferred, the more difficult will be the completion of it. Completed, indeed, it cannot be; and of this too we are fully sensible, otherwise than by the King and the Lords, in conjunction with your Honourable House. But, to the taking in hand this most important of all works, there is *a preparatory operation*, which, we have been assured, and verily believe, is within not only the *power*, but the *practice* of the House — of the House acting in its single capacity, and by its sole authority. This is what we hereby pray for, and it is as follows: —

1. That the House, in and by its votes, may be pleased to give invitation to all persons so disposed, to send in, each of them, a *plan* of an all-comprehensive code, followed by the text thereof; this text, either the whole of it at the same time, or in successive portions, as he may find most convenient.

2. That, for indemnifying each such contributor from the *expense of printing*, the House may be pleased to give authority to him to send in such his work, in manuscript, to any person authorised by the House to print its proceedings: that is to say, for the purpose, and, subject to the limitation hereinafter mentioned, under the assurance that the same will be printed, along with the other proceedings of the House, in like manner as acts of parliament are at present.

3. As to the persons of such contributors, we humbly insist, that, from the liberty of sending in draughts for this purpose, no person should stand excluded. No; not any person whatsoever. For suppose, for example, a foreigner to send in a draught better adapted to the purpose than any draught sent in by any of his Majesty's subjects, — we see not why his being so should debar us from the benefit of it: and assuredly we see not any reason whatever for any such apprehension, as that, by the Honourable House, the circumstance of the draughtsman's being a foreigner should ever cause a less well-adapted draught to be employed and sanctioned, in preference to a better adapted one.

4. As to the expense that might be eventually attendant on the printing of such draughts, it is no more than we are perfectly aware of. But there are two arrangements, which, taken together, we cannot but rely on as sufficient to reduce within a moderate compass the amount of that expense.

5. One is, that it be an instruction to every contributor, that no such contributor shall receive the benefit of the accommodation thus afforded, unless, to each article or set of articles in his proposed code, the *reason*, or *set of reasons*, by which it was suggested, on which it is grounded, and to which it trusts for its explanation and reception, be appended.

6. The other is — that, by the Honourable House, power be reserved to itself, by the hands of any person or persons for that purpose, thereto appointed, — to put a stop at any time, to the printing of any such draught: after which, should the impression be continued, it will be at the contributor's own expense. But that, to assist him in the faculty of thus making a virtual appeal to public opinion, such part of his draught as shall have been already printed, shall be delivered to him, to be disposed of as he shall think fit.

As to the obligation of attaching the abovementioned *rationale*, we trust to it as a powerful *incentive*, to the framing and sending in well-grounded draughts, as well as a powerful instrument for keeping the service unincumbered with ill-grounded and ungrounded ones. To frame a proposed code of laws, with apt reasons all along for its support, is, in our eyes, the most arduous, as well as the most useful, of all purely human tasks that the human faculties can employ themselves upon: and, proportioned to this our persua-

sion, is of course our desire — that, without any exception, the door should remain open to all contributors, as above: while, on the other hand, to frame proposed laws, destitute of such support, is what no hand that can give motion to a pen would feel to be out of its power: it is what not we alone, but our mothers and our grandmothers likewise, would be capable of doing, and might peradventure be disposed to do: and it is (we have sometimes heard) no altogether uncommon sight, to see hands, little better qualified, thus occupied.

To each such contribution should be attached a *name* and address: this, not for the purpose of determining the *authorship* (for that might be left to each one's desire,) but for the purpose of *responsibility*, in the case of any inapplicable matter, sent in for the purpose of derision, by persons engaged by sinister interest in the endeavour to render the measure abortive.

As to *remuneration*, we humbly insist that none, — in any shape other than that of the eventual honour of distinction and public approbation, with the benefits which in so many shapes, in amounts proportioned to the degrees of it, cannot but be among the fruits of such approbation, — ought to be allotted to any work so sent in: so far from promoting, any such remuneration could not but operate in counteraction to its proposed object, as above. It would operate as a notice of *exclusion*, to every man who could not regard himself as situated within the sphere of personal favour; and, the higher the reward, the greater would be the number of those who would regard themselves as thus excluded.

We beg to be believed, giving as we do our assurance to the Honourable House, that it is not to any such purpose as that of seeing so much as proposed, much less effected, any change in the hands, in which the supreme power of government is lodged, that this our humble petition is directed; and accordingly what we not only consent to, but wish and desire is, that, out of the field of the proposed otherwise all-comprehensive code, all those parts which regard the prerogative of the King, the privileges of the several Members of the two Houses of Parliament, collectively and severally possessed, and the consideration of the hands in which the elective function is placed, be excepted; unless it be — that, for the sake of symmetry and completeness, expression be, on those several subjects, given to the law *as it is*, or *is conceived to be*: it being understood that, by the expression so given to matter of this description, the draughtsman is not understood to express either approbation or disapprobation, in relation to any part of it.

LORD BROUGHAM DISPLAYED:

INCLUDING

I. BOA CONSTRICTOR, *alias* HELLUO CURIARUM;

II. OBSERVATIONS ON THE BANKRUPTCY COURT BILL, NOW RIPENED INTO AN ACT;

III. EXTRACTS FROM PROPOSED CONSTITUTIONAL CODE.

BY JEREMY BENTHAM.

FIRST PUBLISHED IN 1832.

BOA CONSTRICTOR, *alias* HELLUO CURIARUM.

SPEECH of LORD CHANCELLOR BROUGHAM, *as printed in the Morning Chronicle of Friday, September 2d,* 1831, *in the Article headed Court of Chancery, on announcing his "resolved on" absorption of the Courts of the Vice-Chancellor and the Master of the Rolls into that of the Lord High Chancellor.*

THE LORD CHANCELLOR sat this morning to deliver the few judgments which remained to be pronounced on matters which had been previously argued before him; and having disposed of them,

His Lordship addressed the Bar to the following effect:—"It is a great satisfaction to me, in taking my leave of the Bar and of the suitors, to know that I have been able to dispose of all the arrears of the business of this Court, and that there are no appeals unheard, no petitions unanswered, and no causes now unheard, except those which are not ready, and which have been put upon the files of the Court subsequent to last June. It is a very great relief to the Court—it will be a very great relief to the Bar—it will be a very great relief to professional men, as I know it will be a very great relief to the suitors—for them to feel that they shall have their business henceforward going regularly on, not incumbered by arrears, and not having their minds oppressed with the harassing prospect of never getting through their business. In the course of next term, the benefit of all this will be felt, and it will be found that the time has been well bestowed which we have been lately occupying, though it may have pressed hard upon the Bar, upon suitors, and upon other professional men, who have been anxiously attending the Court. It has pressed hard also on *the Court*, but *I* have been willing to bear that pressure, knowing well that the public will feel the full benefit next term. It was said to a great man, the most illustrious of all my predecessors, that he allowed the pressure of business upon him to be more than he could bear; to which he replied, 'The duties of life are more than life:' memorable words, to be had in everlasting remembrance by all men who serve their country! The kindness and attention I have received from the Bar are such as to require my most grateful acknowledgments, which I now respectfully offer. I beg leave to add, that *I have now the most sanguine hopes of being able to relieve his Honour the Vice-Chancellor from hearing the greater part of causes, such as those which have been heard by him since the year* 1813. The appeals which I have disposed of within these few months have been 120: of those, 108 have been fully argued and decided—indeed all of them, except *Miller v. Travers, which stands for the opinion of the two Judges who assisted me in it.* The time taken in the arguments upon the appeals (the average time being several hours to each) shows that every one of them were cases of importance, and that there has been no short cause heard by way of appeal before me. This has been the cause of the length of time that has been occupied in getting through the long and heavy arrear—the arrear of years. When I look into this statement, I find also, that in the proportion of six to four, or of three to two, are the number of appeals from his Honour the Vice-Chancellor to those coming from his Honour the Master of the Rolls—arising, no doubt, from the great number of causes decided in the Vice-Chancellor's court, *and from that circumstance only.* It is clear, therefore, that at least three months of the time of this Court would have been entirely saved, if *that arrangement* could have been made, *which* (foreseeing this) *I propounded, but unsuccessfully propounded, when I came into the Court.* I thought that every cause which was either of some importance in point of value, or difficulty in point of law or of fact, that came before their Honours the Master of the Rolls and the Vice-Chancellor, almost inevitably found its way here by appeal—and generally, certainly in the majority of cases, only led to great expense, great delay, and great inconvenience, whether there should ultimately be an affirmance or reversal. I proposed, therefore, that all *causes of difficulty and importance in point of value, or from the law as applying*

to them, should at once be transferred here, and heard by me, as thereby the inevitable appeal would be averted. The event has justified my prospective conjecture, and leads me now to form *the plan which I shall certainly adopt — namely, that of transferring at once the bulk of that business into this Court.* Such a result was long ago foreseen by eminent men. *It was the opinion of Sir Samuel Romilly* — a most venerable name — it was the opinion of Sir John Leach, then a member of parliament, and of many others, *that the erection of a Court for his Honour the Vice-Chancellor would have*, among other things, *the effect of increasing litigation;* and that a mass of business, which did not then exist in Chancery, would be added to the business of the Court. How far that conjecture has been proved by experience, must be visible to all men; since 64 out of the 108 contested appeals were from his Honour the Vice-Chancellor, and have taken up three months constant, laborious, and expensive attendance to all the parties concerned. If, however, that arrangement can be made, which I look forward confidently to accomplishing, I shall then deem it to be my duty to *give to the suitor the full benefit, in all difficult and important cases, of having three judges instead of one to hear their causes. If this cannot be done by the law as it now stands, I trust the Legislature will assist me in effecting it.* My opinion is, that it can be done without altering or adding to the law as it now stands. I have the power at present to *ask for the attendance of any or all the judges in Westminster Hall*, and I know not why I should not have the power of asking to be assisted by the presence of the Master of the Rolls and Vice-Chancellor, when necessity requires. Other Chancellors have had the Master of the Rolls to sit for them when absent; I have never required that, and I trust I never shall; but I think I may have the assistance of their Honours, on hearing causes of *extraordinary difficulty and importance.* The bulk of the cases that are appealed from are not of extraordinary difficulty or importance; but, *in all cases of that class, the suitor shall have the benefit of the other Equity judges being present. There are two or three branches of judicature in which the presence of three judges is infinitely better than that of one:* first, when conflicting *facts* are to be discussed, or conflicting *evidence* to be heard, *a jury is the best forum for such a case — a single judge is perhaps the worst; but three men*, with minds variously constituted, are much more likely to come to a satisfactory conclusion than a single individual. The next is, *where anything like discretion* is to be exercised, either in awarding *damages*, or saying what *costs* are to be paid, which is often a very important, or not unfrequently difficult and delicate inquiry, as too many cases are brought and kept up merely for the sake of the costs. The duty of the judge there is *somewhat like that of assessing damages; and in the exercise of such discretion, it is better to have three judges than one.* Last of all, where there *are great and difficult and important points of law and equity to be settled, it is much more satisfactory to suitors, and to the profession which cultivates the sciences, to have that law considered and settled by more judges than one.* These, then, are the considerations which principally move me to the adoption of *the resolution I have formed.* But, at the same time that I *stop the great bulk of business going before his Honour the Vice-Chancellor*, I shall not deem it necessary to recommend elsewhere that any step should be taken at present to terminate his Court, though in the 53d year of George III. *it was expected that it would end in getting through the arrears.* Though we have now got through the arrears, I do not yet see my way to that which as an ultimate result must be deemed highly desirable. His Honour the Master of the Rolls is more sanguine as to the speedy accomplishment of it than I am; but still I do not shut out from my mind the indulgence of the hope that I may see its termination at no very distant period. *As long, however, as that Court shall continue to exist, I shall endeavour to avail myself, in all difficult and important cases, of the assistance of that most learned, excellent, and able judge, in this Court.* I have said thus much, because I thought it fit, before terminating business, to let the profession know it was not for nothing that I had imposed on them the hardships of these long and painful sittings — sittings, however, not much later — *only two days later than Lord Eldon* has sat; for he having sat to the 29th of August, I have sat only two days longer. At the same time I admit, that though I have sat only two *days* later than usual, yet I have sat many more *hours* in the course of the day, and I am aware of the embarrassments and inconveniences that this may have caused. I am not, however, aware that its tendency has been to abridge arguments in any case, *for I am sure I have endeavoured to show as much patience as any man could possess, that I might not indicate the slightest indisposition to hear the longest arguments.* Even where I have thought argument superfluous, *I have hardly ever stopped the reply, in cases where I have been in favour of the side on which the reply was to be made, and still more rarely have I disposed of cases on hearing one side only.** I, therefore, cannot charge myself with having got rid of this arrear, and accomplishing this dispatch, at the expense of curtailing the hearing of causes. The best proof in the world of this is, that one of the last I heard took up eight hours,

* Why not?

the one preceding it took seven hours, and another immediately before it took six hours. Three causes, therefore, took upwards of twenty-one hours in being argued at the conclusion of the sittings, which surely is a proof that there was no great desire on my part to curtail the arguments, or not to hear counsel. The profession, therefore, and the Bar, I am sure, will rejoice as well as myself when we find we have not attended in vain, while we very soon shall witness the benefit conferred upon the country by having got rid of this accumulation of business; and also in the prospective arrangement touching the Vice-Chancellor's Court, *to prevent delay and unnecessary expense, to raise the character of the Courts of Justice in this country, and to answer the arguments used by persons unconnected with them — arguments so frequently levelled against the legal profession at large.* The profession will feel not only that comfort and peace increased, *but even their own character exalted.* In conclusion, I have to state, that as long as I remain in town, which must be for some weeks longer, I shall devote one day in every week — Saturdays — to hear motions; I shall hear them *in the private room;* and I entreat suitors not to depend on counsel who are absent, or to get counsel to remain in town for the purpose, but to take such counsel as are in town. I have made inquiry, and I find that there will be several counsel of the greatest ability remaining, and I will hear them upon any motions by consent, provided notice be given on the Wednesday preceding, to one of my officers. I have directed an order to be made to that effect. *I do not mean to make any private arrangements a consideration,* but I wish to have the notice of the motion sent to me on the Wednesday, that I may arrange respecting my attendance in the House of Lords, because I am about now to sit from day to day in the House of Lords during the remainder of the Session; but I shall not sit there any Saturday when my attendance may be required here. I think this Court, *sitting by one of its branches throughout the vacation, for the purpose of hearing pressing applications, is one of the most essential reliefs that can be afforded to the suitor, and is almost essential to the useful existence of the Court and the due discharge of justice. It was a remark of a learned and venerable friend of mine — one among the greatest sages of the law — I mean Mr. Jeremy Bentham — that one of the greatest evils arising from vacations was the shutting up the Courts at the very time when suitors might have the greatest occasion to require access to them. I do not think I can subscribe to the whole extent of his doctrine on this point;* but, undoubtedly, that there is a great benefit to be conferred by keeping always open *some part of the Court* for pressing business, *I most entirely agree with him in holding.*"

His Lordship's address was listened to with profound attention, and received with *manifest satisfaction.*

PREFACE.

By the *Boa Constrictor*, alias *Helluo Curiarum*, is meant, as will be seen, the declaredly-determined author of a measure for the strangling and swallowing up of the two courts styled the *Vice-Chancellor's* and the *Master of the Rolls'*, into the Chancery Court. To place it — in the manner that will be seen — in front of, or so much as to give insertion to it into, this publication, formed no part of the original intention. The only publication originally intended, was that of which the Bankruptcy Court is the subject-matter. But the closer the scrutiny into that measure became, the more deeply did I become impressed with the painful persuasion, that in a man in whom, for so long a course of years, I have had the honour and happiness to possess a familiar friend, it was in conclusion my unhappy lot to behold an adversary — and that an irreconcilable one — an adversary, and to what? To law reform—to that all important undertaking, to which, from boyhood, the whole of my long life has been devoted. The consequence was, that, in my view, so long as he continued in the all-powerful situation which he now occupies, whatsoever hopes I had ever entertained of witnessing a consummation so devoutly to be wished, could not but remain in a state of extinction: and that, with all the feelings of a friend in relation to him, I saw no choice but acting in relation to him as I am hereby doing — and alas! in so harsh a way — the part of an enemy, — the exclamation "*Et tu, Brute!*" all the while sounding, as it were, in my ears.

This determination being taken, the prefixing the shorter paper to the longer one presented itself as a sort of preparatory measure, that might be conducive to the end in view.

As to the measure more particularly here in question: from first to last, to see the bill thrown out has never formed any part of my wishes. Two results I saw included in it; — the death of the existing state of things in relation to this part of the judicial establishment, with its procedure, and the birth of a new one: in relation to the first, my wishes were in entire accordance with those of my noble friend; in the other alone consisted the difference.

Throughout the whole course of my labours, I believe that one rule has, with undeviating adherence, been conformed to by me — be the institution what it might, never to engage in any such attempt as that of pulling it down, but for the purpose, and with the endeavour, to raise up something that to me seemed better, in the room of it; of the observance of this rule, exemplification will, on the present occasion, be seen under the head of *Amendments*, in the first part of these Observations, p. 578.

The smallness of the type had for its cause the intention of making use of the letter-post for the conveyance of this tract; little did I then think of the length to which it was destined to be drawn out.

Things left undone that ought to have been done — things done that ought not to have been done, — to these two heads will be found referable the charges here made against the institution, the effects of which are now beginning to show themselves: among the things left undone, consigning to one and the same judicatory the business performed by the court called the *Bankruptcy Court* and the court called the *Insolvency Court*; that is to say, under the judiciary establishment as at present constituted, with its system of procedure: for, under the system which I have ventured to propose, suits of all sorts, without any exceptions worth particularizing, would be taken cognizance of by a set of the same single-seated judicatories, proceeding according to the same simple, natural, untechnical, quasi-domestic system of procedure. In the publication intituled *Justice and Codification Petitions*, may be seen a slight sketch of it. As to the things which in my notion of the matter ought not to have been done, to hold up to view a part of them, nor yet more than a part of them, is the business of the ensuing pages.

I. BOA CONSTRICTOR, *alias* HELLUO CURIARUM:

OBSERVATIONS

ON

THE "RESOLVED-ON" ABSORPTION OF THE VICE-CHANCELLOR'S COURT, AND THE MASTER OF THE ROLLS' COURT, INTO THE LORD HIGH CHANCELLOR'S COURT.

A *Boa Constrictor*, of the first magnitude, appropriately wigged and gowned, crushing in his embrace the bodies, and extinguishing the life, of their two Honours, the Vice-Chancellor and the Master of the Rolls, both of them also appropriately wigged and gowned — no bad subject this for the graver of a *Cruikshank*. All pleasantry apart, I cannot but felicitate those whose hard lot it is to become suitors in equity, at the prospect which such a change presents to view, one stage of appeal at least, and perhaps in some cases two, made to evaporate. Of this halcyon state of things it seems to me that I see a glimpse; may it not prove a phantasmagoric one!

So much for what the Lord Chancellor calls his "resolved-on" *arrangement*. But an arrangement is one thing: a principle on which that same arrangement is grounded, is another: by one and the same person the one may be approved of, the other disapproved of.

"*Number in an Office*"—of these words is formed the title of section 3 of chapter IX. intituled MINISTERS COLLECTIVELY, in my *Constitutional Code:* a proposition I have there advanced is—that, exceptions excepted (and rare indeed, if any, are the exceptions) — be the department what it may, *single-seated* should be every office in that department.* *Single-seated?* For what reason? Answer — For many reasons: but the principal one, and the most appropriate of them all, stands expressed by the single word *responsibility: responsibility* — itself a host of reasons.

"*Number in a Judicatory*" — Of these words is formed the title of section 5 of chapter XII. intituled JUDICIARY COLLECTIVELY, in that same Code: in that section, to the several arguments which, in support of single-seatedness, had been applied to the case of the Administration Department, are added others which presented themselves to me as applying in an exclusive manner, or with peculiar force, to the Judiciary Department.

To these *reasons* (of which further on) I have the mortification of finding opposed, the *authority* of the aforesaid noble and learned Lord, as displayed in the string of dictums stated in the *Morning Chronicle* of the 2d of this instant September, as having been delivered on the occasion of an announced absorption of the Master of the Rolls' and Vice-Chancellor's into the Lord Chancellor's Court: which said oracles of our said *Magnus Apollo* are in the words following; that is to say — "There are two or three branches of judicature in which the presence of three judges is infinitely better than that of one.

1. "First, where conflicting *facts* are to be discussed, or conflicting *evidence* to be heard, *a jury* is perhaps the *best forum* for such a case—a *single* judge perhaps the worst; but *three* men, with minds *variously constituted*, are much more likely to come to a *satisfactory* conclusion than a *single* individual.

2. "The next is — where *anything like discretion* is to be exercised, either in awarding *damages* or saying what *costs* are to be paid, which is often a very important and not unfrequently difficult and delicate inquiry, as too many cases are brought and kept up merely for the sake of the costs. The duty of the judge then is somewhat like that of assessing damages, and in the exercise of such discretion it is better to have three judges than one.

3. "Last of all, where there are great and difficult and important points of *law* and equity to be settled, it is much more satisfactory to *suitors* and to the *profession* which cultivates the sciences, to have that law considered and *settled* by more judges than one.

"These then," concludes his Lordship, "are the reasons which principally move me to the adoption of the *resolution* which I have taken."

There we have his Lordship's dicta.

For my part, my work intituled "Constitutional Code; being," as the title goes on to say, "for the use of all nations and all governments entertaining liberal opinions;" and, for the support and elucidation of the proposed enactive matter, the said work presenting throughout a correspondent quantity of *ratiocinative* matter; it would have been no small satisfaction to me, to have seen the truth of my arguments, which, as above, are

* The department then and there in question, was the Administration Department.

delivered in support of *single-seatedness* in judicature, subjected to the scrutiny of so enlightened a mind, and to have given to the work in question the benefit of his lordship's observations on the one side or the other, or on both: seeing that the questions are not a few, as to which, with perfect sincerity, by one and the same man (as Sir Roger de Coverley was wont to say) "much may be said on both sides." This satisfaction I might have had, had his Lordship been pleased to add them to the "*pap*" which he was pleased to *say pray for*, and take from a tea-spoon of mine, when sitting on my lap, at the hermitage from which I write: those of the said arguments I mean which apply to the case of the Administration Department, that part of the work being then already in print; to which arguments he might have added moreover those which apply exclusively to the case of the Judiciary Department: for though not yet in print, they were even then in manuscript; and, were it only for the chance, howsoever feeble, of their *now* receiving that honour, I have some thoughts of sending them to the press immediately, and adding them to this paper, before I have done. Speaking of those same wished-for observations, I take the liberty of supposing them as having place on the one side, on the other, or on both.

Unfortunately, neither in any one of the above-mentioned *dicta*, nor in all of them put together, can I find any portion of that sort of matter called ratiocinative, which could with propriety be made to occupy a place in that same work of mine: for, for the support of his Lordship's proposed enactments, *ratiocinative* has, in *ipse dixitical* matter, found, on almost every occasion, if not a more *instructive*, at any rate a more compendious, and, to the furnisher at least, a much more commodious substitute.

Now, then, for the three cases in which, according to his Lordship, three judges are better than one.

Case I. "Conflicting facts to be discussed, or conflicting evidence to be heard." Of the sorts of cases for which three judges are, according to him, better than one, this is the first mentioned. But here comes a puzzle. Good for this case as are three judges, another *forum* he descries and points to as being for this same case still better: nay, so much better as to be the best possible. And this other *forum* — what is it? Even his Lordship's old favourite, "*a jury*." And of what sort of men is the population of that same *forum*, according to his Lordship's declared conception of it, composed? Of "any twelve men," so they be "*good*" ones, and "put into a box:" — "*no* EXAGGERATION" here; so his Lordship was pleased to assure us. Such, after the most mature deliberation, was his Lordship's opinion, as declared on the 7th of February 1828, in and by his self-published speech of that date, p. 5.*

Now, then, comes the puzzle. This *forum* being the perfection of aptitude — of appropriate aptitude, with relation to this very case, — why not on the occasion in question take it in hand and employ it, instead of the *three-seated* judicatory — a tribunal which, *three-seated* as it is, yet, its seats being in numbers no more than a quarter of those of the *forum*, yields still to it in point of this same aptitude?

In the course of the tract intituled "Observations on the Bankruptcy Court Bill," those same arguments may perhaps be given at length: meantime, any something being on this occasion better than nothing, a sort of abridgment of them may be seen in the proposition following: —

As to the conduciveness of *single-seatedness* to the ends of justice, comparison had with *many-seatedness*, no otherwise can any estimate of it be formed, than by the degree of *appropriate aptitude*, in all its branches, which in the two cases is likely to have place on the part of the judge or judges, relation had to the functions of their office. For determining on which side the aggregate of such appropriate aptitude is likely to have place in the greatest degree, let attention be applied to the following propositions: —

1. As in the case of any other functionary, so in that of a judge. The state of the *law* being given, — for every practical purpose, appropriate *moral* aptitude must be considered as exactly proportioned to the strictness of his dependence upon *public* opinion.

2. Singly-seated, a judge finds not any person, on whom he can shift off the whole, or any part, of the imputation, of a mischievous exercise given to any of his functions. Not so, when he has a colleague.

3. No person does he find to share with him in the weight of that odium.

4. No persons does he find in the same situation with himself, engaged by the conjunct ties of self-regarding interest and sympathy, to support him under the apprehension of it, by the encouragement given by their countenance.

5. He has it not in his power, without committing himself, to give to an indefensible exercise made of his functions, *half* the effect of a *vote*, — namely, by purposed *absentation* and non-participation.

6. He finds not, in the same situation with

* "And in my mind" said his Lordship, "he was guilty of no error — he was chargeable with no exaggeration — he was betrayed by his fancy into no metaphor, who once said, that all we see about us — King, Lords, Commons, the whole machinery of the state, all the apparatus of the system, and its varied workings — end in simply bringing twelve good men into a box."

himself, any person to share with him, and in proportion draw off from him, the whole, or any part, of any lot of *approbation*, whether on the part of his superior officer, or the public at large, that may come to be attached to *extra merit*, in any shape, manifested, on the occasion of any exercise given to his functions.

7. His reputation stands altogether upon the ground of his actions. He finds not in the same situation, any person to help him, as numbers help one another, to raise a *schism* in the public, — and, by the mere force of prejudice — without *evidence*, or in spite of evidence, in relation to specific actions, — to draw after them the suffrages of the unreflecting part of it.

8. Of the quality correspondent and opposite to appropriate moral aptitude, the most mischievous effect is — disposition to exercise arbitrary power. But that which constitutes *arbitrary power* in judicature is — not the *unity* of the judge, but his exemption from the controul of a superior, — from the obligation of assigning reasons for his acts, — and from the superintending scrutiny of the public eye.

9. The reproach of arbitrary power belongs, on all the above accounts, to the authority of many judges, especially large bodies of judges, in contradistinction to that of *one*.

10. The circumstances which render plurality indispensable in sovereign legislature, do not apply to judicature.

11. So many *seats*, so many sets are there, of persons, who, by community of sinister interest, stand engaged to secure the possessor of the situation against responsibility in every shape, for delinquence in every shape. So much for appropriate moral aptitude.

12. Now as to intellectual and active aptitude. In a singly-seated judge, most *intelligence* is likely to be found, in so far as intelligence is the fruit of exertion.

13. A judge, by being single, exerts himself the more from his seeing no resource but in his own powers.

14. Hence, only in the case of a singly-seated functionary can *promptitude*, or say *dispatch*, be maximized.

15. A singly-seated functionary has but one opinion, and one set of *reasons*, to give.

16. No person's opinion has he to *wait* for.

17. No person has he to *debate* with, to *gain* over, or to *quarrel* with.

18. No person has he to put unnecessary *questions* to him, — to propose unnecessary *steps*, — or to necessitate useless *adjournments*.

19. All the advantages that can be expected from a multiplicity of judges, may be insured, in a much greater degree, by a numerous *auditory*, with the addition of the whole world for *readers*, as to everything in the conduct of a judge, that any men think worth their notice; and any advantage that can ever have happened by accident from such multiplicity can be imputed to nothing but the chance it affords for publicity.

20. The advantages obtainable from a *plurality* of heads, independently of exertion, are needed in no more than a small number of cases; and, in proportion as they are needed, may be had, by the help of *advocates* and courts of *appeal*, without putting judges, more than one, into the same court.

21. *To suitors* — that is to say, to persons having business at the office, — causes of *delay* are, in a large proportion of the number of individual cases, to a greater or lesser amount causes of *expense*.

22. If these principles be just, the saving they will produce in the *expense* of the establishment is prodigious. In the expense attending the collection of *taxes* — in the terms of *loans* — in the adjustment of most other plans of economy in finance, a saving of a few *units* per cent. is thought a great matter; *here* it runs to *hundreds* per cent., and the *least* saving is a hundred.

Then as to *facility*. The judicatory presents a difficulty of which the *forum stands*, or (if you please) *sits*, clear. In the judicatory, a condition required is, that the *minds* of the members be, all three of them, variously constituted; and in this qualification resides the *differential character* (as the logicians say) of the tribunal, its distinctive excellence; its sole alleged title or claim to preference. But, of this qualification, how is the existence to be ascertained? There I see a knot, which, staring his Lordship in the face, cries aloud to him — "*Nay, but you must untie me.*"

Is it by identity — in the first place, of professional practice, — in the next place, of official functions? Is it by the "*viginti*," and ever so many more than the "*viginti annorum lucubrationes*" applied by the whole fraternity of them constantly, and with a more than ordinary degree of attention, to the same subject, that this same indispensable "variety of constitution" is to be produced? Uniformity, rather than the promised variety, is the effect I should have looked for from such a set of causes. Shaken out, by "the indiscriminate defence of right and wrong" carried on, through so long a course of years, by "the indiscriminate utterance of truth and falsehood," common sense and common honesty make their escape, while the remaining matter contracts in proportion, subsides and coalesces in all alike into a paste of appropriate shape and colour, as if cast in one and the same mould: insomuch that, when, after the fire of London city, gratitude hung up the portraits of the twelve judges in that case, had not magnificence been preferred to

economy, one portrait might have served for all twelve: as in the *Nuremberg Chronicle*, in the list of the progenitors and descendants of Abraham, so strong (it was found) was the family likeness, that one venerable head and shoulders, was so managed as to serve, without objection, for divers generations.

Turn now to the *jury-box*. Here all is (as a sailor would say) *plain-sailing*. According to his Lordship, all that is here requisite is — that there be *men* — that they be *good* — that there be *twelve* of them, — and that they be "put into a *box*." Sir Robert Peel requires other qualifications: one is, that they be capable of being packed: but the above is all that his Lordship requires: no need of any "variation in the constitution" of *their* minds: so far from needing it, sooner or later, full or fasting, *nolens volens*, they must be every one of them of the same mind. "Variety of constitution:" by any such property would the twelve minds be rendered the more easily liquifiable into one? Not they indeed: they would, in proportion to the degree of the aforesaid variety, be more intractable and insoluble.

So much as to the question between single-seatedness and many-seatedness, and in particular triple-seatedness. Now for *judges* and *boxes*. If, after all, it be really true, that identity of habits is so surely efficient a cause of variety of constitution, a little arrangement or two there is, which I would humbly suggest for his Lordship's consideration, as promising an ulterior improvement, grounded on his own so deliberately established principles. Let him take the reverend judges, all twelve of them, or whatever be now the number of them, and put them into a *jury-box*, setting down the box in the court of Chancery; and to make sure of that goodness which is the characteristic quality of a juryman, and that nothing which appropriate learning and wisdom can supply may be wanting, let him for this purpose borrow from Lord Tenterden the very jury-box which has so long been diffusing its goodness through the King's Bench. As to his power for making this transference, in his own view of it, at any rate, it stands not exposed to any dispute; "I have power" says he, accordingly — "I have at present power to ask for the attendance of any or all the judges of Westminster Hall."

On the other hand, if this be a little mistake of his (for *nemo mortalium omnibus horis sapit*,) and if accordingly diversity of habits is a surer cause than identity is of variety of constitution, let him once more betake himself to his old favourites the good men and true, and set *them* down comfortably in their own box. I mean not the *special jurymen*: for the squirearchy, being aristocrats, are all cast in the same mould. The jurymen whom I mean are the common jurymen: for among them there will be as many different habits as there are trades.

Now as to "conflicting facts and conflicting evidence." As to this matter, a circumstance which, on the present occasion, seems somehow or other to have dropt out of his Lordship's mind, is — that it is from these same conflicting facts and evidence that judges themselves deduce their conclusions: and not only *common-law judges*, but even *equity judges*: and not only equity judges in general, but even his Lordship himself. Yes: even his Lordship himself. For does he not hear bills and answers?—does he not hear answers to interrogatories?—does he not hear affidavits? And do not these same bills and answers, interrogatories and affidavits, relate to "conflicting facts to be discussed, and conflicting evidences to be heard?" I speak under correction: but really his Lordship puts one in mind of *Monsieur Jourdan*, who had been talking prose all his life long without ever being aware of it. All their official lives long, added to their professional, have all judges — learned judges — been in the habit of hearing and dealing with this sort of intellectual matter: a juryman — the first day of his being put into the box — has not heard a syllable: which first day may also be the last. Here, then, we have on the *bench* the maximum of experience; in the *box* the maximum of inexperience. Here, then, we have a problem calling on his Lordship for solution: required, to show the advantages which, on this occasion (not to speak of other occasions,) *inexperience* possesses over *experience*.

In the box, men have the evidence elicited from them in the best shape; on the bench, in three of the worst shapes it is in the power of human ingenuity to devise: namely, affidavits, answers to bills, and answers to written interrogatories, without any answers to such questions as those same answers might suggest: the deduction depending upon, and varying in great measure in proportion to, the badness and deceitfulness of the shape: but still, is it not on facts — conflicting facts — and conflicting evidence, that the adjudication is made and pronounced in the one case as well as in the other?

True it is, that in the case of the bench the conclusion is styled a *judgment* or a *decree*: in the case of the box, a *verdict*: but what difference this denomination makes in the nature of the matter, I must, with all submission, leave it to his Lordship to determine.

True it is, moreover, all this while, that the question — the principal question — is between judges and judge; not between judges and juries: the question, as to juries, being blown in, by his Lordship, as it were by a *side wind*—in the form of a parenthesis. But,

howsoever it may have got in, this doctrine was by far too important to be passed by unnoticed. For here may be seen — and from those same most impressive lips, the confession, *Video meliora proboque, deteriora sequor.* The jury-box, with its contents, being the best machinery of the two — indeed, according to your own declared opinion, the best of all possible machineries,— what, on any occasion, and this in particular, should hinder you from making use of it? Surely not any *unpopularity* that you can see in it?

2. Now for case the *second*—namely, "Where *anything like discretion* is to be exercised:" subject-matters of the discretion in this case, "damages" and "costs:" operations to be performed by the light of the discretion, "awarding the damages, and saying what costs shall be paid." Thus far his Lordship.

Where anything like *discretion* is to be exercised? This read, I fell to rubbing my eyes, and said to myself—Am I now awake? That there may be judges who, on this or that occasion, are capable of acting without discretion, is indeed conceivable enough; and perhaps his Lordship may not have any very great distance to look to find one. But, that there should be in existence any such judge as one who, by speaking of the case in which *something like discretion* is to be exercised as being a *particular* case — should give it to be understood, that, in his opinion, by a judge, generally speaking, neither discretion itself — no, nor so much as anything *like* discretion — should be exercised, — this it is that makes me stand aghast.

The plain truth is, that this same word *discretion* is a sort of *arrow*, which learned judges, when in a state of conflict with one another, and in a rhetorical mood, have been seen letting fly at one another. In days of yore, *Hector* and *Achilles* were Lord Camden, Lord Chancellor — and Lord Mansfield, Lord Chief Justice:—"*Discretion,*" exclaimed one day Lord Camden — "*Discretion is the law of tyrants.*" Whence came it to be so? Even from this: — namely, that something about *discretion*, and in favour of it, Lord Mansfield had been *indiscreet* enough to utter. Thereupon, as if *Achilles* had been slain, in placard types was trumpeted forth in the Whig periodicals and pamphlets of the day, this *dictum* of their *Hector*, who, after all, found himself compelled to turn his back upon Seals and Bench. Discretion is the law of tyrants? Yes —and sure enough, in an unguarded moment, something rather approbative than otherwise of the use of discretion had dropt from the lips of the Lord Chief-Justice. I say *unguarded:* for had he put before it the word *sound*, there would have been nothing to lay hold of, and the bolt would not have been shot; nor, if shot, have stuck upon it.

Let me not be mistaken. No such intimation do I mean to convey as that the course my noble and learned friend means to recommend is the law of tyrants: all I mean to say is, that, when employed in certain ways, the word *discretion* is the word of parrots; and that, though the lip it comes from should belong to a head which had ever so full bottomed a wig over it, no determinate idea — no idea capable of entering into the composition of any tolerably effective argument — would come in company with it. So much for the word *discretion*. Meantime, on the present occasion, what is at the bottom of it? If anything, it is this: — when the subject of decision is — not a quantity *already* determinate, such as a house, or a horse, or a sum certain, due on a note of hand — but a quantity which *remains* to be determined, such as a sum of money in compensation for a wound — wound to body, reputation, or domestic peace (*vulgo*, crim. con.) — then so it is, that that which in the way of decision is to be done is—upon a *scale* of greater or less length to make choice of some one *degree*, to the exclusion of the rest. The operation of fixing upon this degree is what goes commonly by the name of *liquidation*. This exposition you will not find in Coke upon Littleton; but upon examination, should you deem it worth the trouble, you will not the less find it to be correct: and so it is, that this mode of decision, commonly called *liquidation*, is of the number of those, the formation of which has from time immemorial been in the hands of a jury. Now, then, as to this same operation, true it is they are used to it. But are they exclusively fit for it? *Semble que non:* no; nor so much as *equally* fit for it. Used to it they are indeed; but how? even as eels are used to be skinned. No eel is used to be skinned successively by several persons; but one and the same person is used successively to skin several eels.

So much for *damages:* now as to *costs.* When for its reasonableness the quantum of the allowance made in the name of *costs* depends upon the propriety of the degree chosen, as above, — as, for example, in the case of the sort of allowance made to a witness for *diet* in part of travelling expenses,—they may be in this respect, and in so far, upon a footing with *damages:* but in so far as they consist of fees of judicial officers, in this case they are so in but a small degree: generally speaking, these same fees are so many determinate quantities: and so in the case of costs as between attorney and client: so are the fees actually paid to *counsel* — degrees and liquidation are altogether out of the question here. But all this while, all this talk about *costs* (not to speak of *damages*) — what is it to the purpose? Be the functionary in question a juryman or a judge, make what you will of *discretion*, what difference can it make — what

difference whether the decision to be formed be called a *verdict* or a *decree*? liquidation, as above described, or any other operation? Talking is one thing; thinking is another: talking (at any rate, in any determinate manner) is less needful at the Bar, more needful on the Bench. On the Bench, talking without thinking makes bystanders shake their heads.

Another thing. Of this same reasoning of his Lordship's, application being made by him — not only to cases "where something like discretion is necessary," in saying "what costs are to be paid," but also to cases where something not less like *discretion* is to be exercised in awarding "damages:" in such sort, that, in those cases likewise, three judges are, according to him, in no less degree better than one: this being the case, may it not be that *these* cases likewise are among those which are resolved by him to be brought within the field of his jurisdiction, as above, in the same manner as these others?

If so, then so it is, that, notwithstanding that for these same cases juries are so much better than judges, their jurisdiction is actually resolved by him to be taken from those same favourites of his. If so, then, alas! how feeble and slippery a thing is fondness in high places!—"put not thy trust," says somebody in holy writ—"put not thy trust in princes." In princes then shall we put our trust? No: nor yet in *chancellors*.

3. Case III. "Last of all, where there are great and difficult and important points of law and equity to be *settled*, it is much more satisfactory to *suitors*, and to the profession which cultivates the sciences, to have that law considered and *settled* by more judges than one."

Settled indeed! — settled — by *judges*, and those Equity judges, three in number, the Lord Chancellor himself included!—as if any "great and important points of law and equity" or any points at all of law or equity, ever had been settled by judges — by judges in the number of three or in any other number: as if it were in the nature of the case that any points at all, of law or equity, ever should be *settled* by judges — by judges in any number, acting as such: as if any point of law could ever be settled by any other instrument of settlement than that which is composed of a determinate assemblage of words, acknowledged to be the words of a determinate person or set of persons, invested with the branch of power styled the *legislative*.

Settled indeed! Yes: if instead of *settling* the one thing needful were unsettling, this is what is in the power not only of the three judges in question acting collectively, but of a single one of them, that is to say, the Lord Chancellor, acting severally. This is what he can do — this is what he understands perfectly how to do — this is what, over and over again, he has done — this is what he has been suffered thus to do, and without any the least notice taken of it: such has been the stupidity or supineness, or such the treachery and cunning of those individuals by whom, in conjunction with their fellow-legislators, this contempt of the highest authority in the state has been left unpunished. As to proof, looking out for proof of the perpetration of this crime would be looking out for proof of the existence of the sun at noonday: in the mind of any law practitioner or law student of a year's standing, the single word *registration* will suffice to call up a swarm of examples of this same securiticide practice. In the miscellany intituled "*Official Aptitude*," &c., in that one of its papers which is intituled "*Indications respecting Lord Eldon*," may be seen an example, not merely of the practice, but of the avowal — the open avowal of it.

So much for *settlement*. Now for *satisfaction* and its conjugates, *satisfactory* and *satisfactoriness*. In this same *satisfaction*, we have the *end in view* which the noble and learned judge has thus declaredly set before him, on the occasion of the "*resolution*" declared to be on this occasion come to by him — the resolution to bring about this great change. Satisfactory? — to whom satisfactory? Some person or persons, in whose breasts the agreeable sensation designated by the term *satisfaction* will have place, in consequence must be found, or no such quality as that which is designated by the attributive *satisfactory* can have been produced by this same change.

Out of the above-mentioned three "branches of judicature" brought to view by his Lordship, as furnishing that same number of *cases* in which "the presence of three judges is" so much "better than that of one" — in two, namely, the first and third, this same word *satisfactory* is inserted in the sentence, and employed in giving expression to this so highly desirable effect. But in the first of the two cases — namely, where "conflicting facts are to be discussed, or conflicting evidence to be heard," — in this case, of the persons in whose breasts the sensation is to be produced, no intimation whatsoever is conveyed.

Remains, as the sole case in which any such information is afforded to us, case the third — namely, as above, the case "where great and difficult and important points of law and equity are to be settled." In this case, then, who are the persons in whose breasts this same agreeable sensation is to be produced? *Answer* — Persons of two classes or descriptions; namely, 1. "The suitors;" 2. "The profession which cultivates the sciences" — meaning (for what other things can it have meant?) the science of law, and the science of equity.

Now then, as to these same two classes,

that to one of them the change, if affected, *may* be made satisfactory, is what I can conceive; though as to its being *actually* made so, this is more than I could venture to promise myself: this class is that designated by the name of the "profession which cultivates the sciences." But as to the other class — the class composed of the *suitors*, whatever I may have *supposed* on first taking the matter in hand, nothing, upon a *closer* inspection, can I descry in the change — nothing that has any tendency to produce any such agreeable effect. Yes, if neither of their two Honours were to be on any occasion thenceforward present in any court other than that in which his said Lordship sits; on which their own courts would take the flight to the moon: whereupon, as above intimated, there remaining no more courts than one, to these same suitors the corresponding quantity of delay, expense, and vexation, would be saved.

But to say that to both these classes, — namely, suitors, and the profession which cultivates those same sciences, — one and the same arrangement will be satisfactory—to say *this*, is as much as to say, that to the sheep and the wolf one and the same arrangement of the field or the sheepfold will be satisfactory: to the sheep (need it be said,) the arrangement which, on this, as on every other occasion, will be the most satisfactory one, is that, whatever it is, by which the several quantities of delay, expense, and vexation, are minimized: to the profession which, according to his Lordship, "cultivates the sciences," the arrangement which, on this, as on every other occasion, will be most *satisfactory*, is that by which the quantity of delay, expense, and vexation, will be maximized: not that, considered by itself and for its own sake, delay will be thus satisfactory: no; scarcely would it be in any degree satisfactory, were it not for the use it is of in making addition to the expense, and the addition made to lawyers' profit by addition made to that same expense.

That to his Lordship, the arrangement thus by his Lordship resolved to be made, would, if made accordingly, be satisfactory — this is what may, without difficulty, be conceded: but this, howsoever it may have been the end in view aimed at, is not any part of the end in view professed to be contemplated, and endeavoured to be accomplished; insomuch, that when the offspring of the mountain, which in her confinement has had so hard a time of it, has been looked for, not so much as a mouse, it is believed, will be found.

Moreover, as to the fields, which, speaking in general terms, his Lordship speaks of as having for cultivators the persons he mentions, these are "*sciences*:" but of the only two fields in particular, which, as above, are mentioned by him as being cultivated (namely, *law*, meaning common law, and equity,) neither the one nor the other is, in its entirety at least, the subject-matter of a science. The subject-matter of a science is a thing capable of being known: but a thing which has no existence, is *not* a thing capable of being known: of that which is called *equity*, no part has any existence; of that which is called law, that part which, in contradistinction to statute law, is called *common law*, has not any more existence. An act of parliament *is* really a law: to know what there is in this or that act of parliament — to know, for example, what, under and by virtue of an act of parliament, a man is to pay in the way of a *tax*, — is indeed to be in possession of so much *knowledge*, and that *useful* knowledge: but it is not to be in possession of what is meant by *science;* any more than to know what o'clock it is. To know how to get money, by pretending to know what, on each several occasion, *law* says, or *equity* says, — this may, perhaps, indeed, be said to be a *science:* at any rate, the actually getting money in that way may be said to be exercising the correspondent *art*. But, sure enough, neither the doing this, nor the knowing how to do it, is what his Lordship meant when he spoke of "cultivating the sciences."

The knowledge of what *law ought to be* — that is to say, of that rule of action, conformity to which will, on each occasion, be in the greatest degree possible contributory to the happiness of all persons interested, — this is *indeed* a *science*. But, this science — how many are the men of law that ever thought of cultivating it? What has ever been to be got by it? What motive, of any sort, has any man of law, as such, ever had for cultivating it? What Bench is there that it has ever led to? His Lordship — did he himself ever stoop to cultivate it?—did he ever deign to bestow a thought upon it? Is it anything better than *theory*? And with what disdain do not noble and learned lords look down upon *theory* from the heights of practice!

So much for rules and corresponding principles: — Lord High Chancellor's rule, three judges on a bench better than one; corresponding principle, the *triple*-seatedness-preferring principle: — unofficial theorists' rule, one judge on a bench is better than three or any greater number; corresponding principle, the *single*-seatedness-preferring principle.

So much for rules and principles. Now for the application made of these same rules and principles — the application made of them by his Lordship to the particular case in question. What now shall I say of it? To speak of it, I must either profess to understand it, or profess not to understand it. Of these two opposite professions, the first is what I feel myself utterly unable to make, consistently

with truth: irresistibly, therefore, the other forces itself upon me. Of this dictum of his Lordship's, the meaning not being tangible, left to me are the words: these I must take in hand, and send my thoughts abroad in quest of some meaning for them.

At a former time, to which I see allusion is made by him, what he proposed stands thus expressed: — "I proposed, therefore," says he, "that all causes of difficulty or importance, in point of value, or from the law as applying to them, should at once be transferred here and be heard by me, as thereby the inevitable appeal" (meaning, I suppose, the otherwise inevitable appeal) "would be averted. The event," continues his Lordship, "has justified my prospective conjecture, and leads me now to form the plan which I shall certainly adopt — namely, the transferring the bulk of that business" (meaning equity business in general) "to this court," (meaning the Lord High Chancellor's Court, in contradistinction to those of the Vice-Chancellor and the Master of the Rolls.) Thus far his Lordship.

Now, then, as to *importance*, not to speak of *difficulty*, on the occasion of the *application* made of *the law*, — where is the cause that is not of importance? If that which is of importance to the suitors, or to one of them, is of importance, then (as the madrigal has it) "ten thousand pound to one penny" — no one such could be found. A cause which swallows up the whole of the property a suitor can command — is *that* cause of the number of those that are of "*importance?*" In point of value, sufficient to swallow up the whole of the property of nine-tenths of the good people of England, not to say ninety-nine hundredths, would be found to be, in the case of the least importance that ever came before the court, the costs expended upon it before it had received its termination: the *costs*, I say, over and above the value of the subject-matter of the dispute.

Now, then, if so it be, that on the subject of importance as applied to a law or equity suit, there be in his Lordship's mind, enlightened as it is, anything of a misconception, where shall we look for the cause of it? Shall it not be in the loftiness of the situation occupied by it? In the eye of the learned profession and the opulent aristocracy, there are two classes of men whose happiness is of importance; namely, the said professional class and the said aristocratical class; forming, together, say between one-tenth and one hundredth of the whole community: there is one class, the happiness of which is of no importance; namely, the remaining nine or ninety-nine. On this theory, on a careful examination, has been found to be built the whole structure of the judicial establishment in England, and the whole of the system of procedure, according to which that establishment conducts its operations — an establishment and a system having for their object or end in view, in as large a proportion as may be, the dividing between the learned profession and its best customers, — namely, the dishonest among the relatively opulent, the property of the relatively unopulent suitors: for such is the effect — the manifested, the uncontroverted, the uncontrovertible effect — of factitious costs, and the system of procedure organized for the purpose of giving admission to them in the largest quantity possible: demonstrated may all this be seen in the *Petition for Justice*.

Well: but, for argument's sake, let it be admitted that some causes there are which are *not* of importance. Thereupon comes the question — *how* — by what *criterion* — can those who are empowered, and at the same time disposed, if any such there be, to distinguish, — and distinguish in time to prevent suffering, — those causes which are *not* of importance, from those which *are:* and, in addition to this, comes, moreover, that other question, as to *difficulty* — the question — between those which are *not* of difficulty, and those which *are*. In the case of each individual cause, is there to be a sort of preliminary *trial*, or equivalent to a trial, for the purpose of ascertaining whether or not it be of *importance?* And so, moreover, in regard to *difficulty?* If so, by what course are these several *preliminary* suits or causes to be respectively conducted? — by *bill in equity?* — by *petition*, as in a bankruptcy case? — by a *grand jury*, as in common-law penal cases? — or by action, real or feigned, as in a civil cause? — or would not trial by *cross and pile* be preferable to them all? for, at any rate, it would save, or at any rate, if his Lordship pleased, might be made to save, *costs*.

One thing we are informed of, and that is, — that of the aggregate number of causes, the great *bulk* will enjoy the benefit of this same exaltation; but still the number of them — the absolute and relative number — remain to be grasped at by conjecture.

Now, then, comes the transference — the so determined *transference*. What, on this occasion, can his Lordship have meant by *transference?* — to what causes was it meant to apply? — to causes already in existence, or future contingent causes, and those only? — or to both classes? In each of these two respectively, by what *hands* is the transference to be made? — in what hands is it to originate? Will his Lordship, *ex mero motu*, go to the court below, take in hand the *record*, lay it on his shoulder, and thus carry it bodily into the court in which he so illustriously reigns? saying or not saying — this cause is of sufficient importance to be, in the first instance, and thereby to a certainty, heard and deter-

mined by me? — of too great importance to be entrusted at all to such a man as you, Sir Launcelot Shadwell, or to such a man as you, Sir John Leach, otherwise than in *leading strings*, with myself to hold them? Or will he wait for some one else, and who, to *move* his Lordship for leave to bring up the cause into his Lordship's high court? In this latter case, the motion — will it be a motion of course, or must it be a motion for a rule to show cause why this new sort of *certiorari* should not issue, with liberty, on the other side, for cause to be shown accordingly?

Difficulties upon difficulties thus stand in the way of this arrangement, the design of which is to remove difficulties — difficulties, and those such as I cannot but think will be found to be insuperable ones.

So much for the *causes*, and the *transference* so resolved to be performed of those same *causes*. But now for the *judges* — the two other *judges*, whose destiny it is to hear, or be present at the hearing of, and to help determine, or be present at the determination of, those same causes. By what means, in what manner, are they to be transferred from their respective inferior benches to his Lordship's superior bench? This same transference — will it be *agreeable* to them respectively? Will it be (to use his Lordship's word) *satisfactory* to them? May it not happen to them to be more or less recalcitrant? On the one bench sits the *Master of the Rolls:* but another seat there is, on which, if not now, it may happen to him to sit any time; and that is a seat in Honourable House. In that house sat lately the most illustrious of his predecessors, *Sir William Grant;* and in support of aristocratical swindling, and against the cause of moral honesty and payment of just debts (Romilly *è contrà*,) knight's service did he do there.

Should, then, either of these demur, will he send his messenger to them, as did in Charles the First's time the Honourable House, to take them bodily off their own benches, and set them down on his Lordship's? — or will he himself take them up in his noble arms, and on each shoulder, St. Christopher-like, carry them off, and so deposit them?

To save this trouble, will Lord Tenterden lend him a *mandamus?* Scarcely without an act of parliament to warrant it, the attainment of which, in case of need, seems indeed to be among the number of his Lord Chancellorship's resolves. But then will come committees, and first, second, and third readings to both houses, and objections upon objections.

So much freer from difficulties would be the jury plan — the plan so decidedly pronounced by his Lordship to be the better of the two. "*Good* men," in the shape of jurymen, are as tame and obedient as spaniels. Show them a box, and call it a jury-box; they run *into* it at first word. Vice-Chancellors and Masters of the Rolls — the more I think of them, the clearer I am that they would run rusty. I hear them remonstrating and preaching — I see them kicking and sprawling, with clouds of powder flying out of their wigs, before they can be brought, if ever they can be brought, to sit still under his Lordship's eye, and nodding approbation in obsequious silence.

Before I leave this topic, let me give utterance to another humble wish I have formed, which is the wish to know, whether (jurymen apart) the preference given to the greater over the lesser number stops at the number *three*, or whether, if he could get any, and what *greater* number for his puisnes, he would do so, his stopping at number *two* having no other cause than that he knows not very well how to get any more of them. To my humble apprehension, if in any degree that "*variety of constitution*" in which he puts his trust were to be found in number three, it would, in all probability, be found in a still higher degree in number four; and so on in the numeration table. If it be in superior magnitude in number, in conjunction with "*variety of constitution*," that he puts his trust, I could point to situations more than one, in which he might find judicial characters for puisnes with less danger of difficulty than in the two only ones he as yet speaks of: for example, Masters in Chancery, Magistrates paid, Magistrates unpaid, men qualified to be special jurymen, men qualified to be grand jurymen; and, to add dignity *ab extrà* to intrinsic aptitude, even a Lord or two might, with less reluctance than the Master of the Rolls (not to speak of the Vice-Chancellor), be prevailed upon to lodge their sitting-parts on the high bench.

For my own part, my own opinion, right or wrong, is at any rate clear, determinate, and self-consistent: it is — that so far as depends on *number*, in the case of a judicial situation, aptitude is as the number of the functionaries occupying it, inversely; were it only because responsibility is so: or in other words, inaptitude is as the number directly, and for that same reason. Now, then, what on this occasion I could wish to know is, whether in his Lordship's opinion this same proportionality has place—the only difference between us being that between the *inverse ratio* (I speak here to the noble and learned mathematician) and the *direct;* or whether the numbers to which on this occasion he gives his preference, follow one another in perturbate order (as Euclid has it,) like cards in a pack well shuffled, or in the regular rank and file order of the numeration table.

If Masters in Chancery would be "satisfactory" to him, I dare answer for him and them, he might, without any dissatisfaction

en their part, have them to sit with him; and in whatever number would be most "satisfactory" to him: especially if they were to have, each of them, all the while, a newspaper to read, or pen, ink, and paper, to write letters with (as some learned judges of superior order have been seen to do, while learned counsel were straining their throats:) the Master's clerks doing, all the while, at their respective chambers, the business which their said Masters were paid — by a fee for each business — for pretending to do. An additional source of *satisfaction* in this case is, that those same assessors would, every one of them, *know his place*. This place is, on each side, that which is as far from that of his Lordship — the Lord High Chancellor — as possible: his person being encompassed with an atmosphere the repulsive quality of which is strong enough to produce that decorous effect. Such, at least, speaking from the testimony of my senses, used to be the state of these things in former days: nor could I, without a sentiment of commiseration, behold one of these learned gentlemen in the state of humiliation to which he seemed doomed: his Lordship not taking any more notice of him than if he were a post. A Master of the Rolls or a Vice-Chancellor — would he submit to this? I question it.

This change, then, supposing it effected, — what would be the effect of it? Just so much pure evil — evil, without a particle of the matter, or in the shape, of good: the business of the two subordinate courts interrupted and deteriorated: and the business of the highest sphere — of the sphere illumined by the brightest luminary of the law — the business of the superordinate court, not benefited nor advanced, but retarded also: the suitors of the subordinate courts — such of them at least as are *in bonâ fide*, not wilfully employing the power of those same courts as an instrument of depredation or oppression — these ill-starred men, vexed by delay: the practitioners in those same subordinate courts vexed likewise, and by that same cause: and to conclude the train of mourners, the two unhappy subordinates — mutes, and, for the loss of their own business, mourners — their two Honours, vexed likewise: vexed, by being humiliated, dislocated, disempowered, dishonoured, and metamorphosed into mutes: singing, when out of court, diswigged and disgowned — singing in doleful ditty and duet,

"*Nos inhonorati et donis patruelibus orbi.*"

As for me, when I entered upon this discussion, as the reader may have observed, a ray of hope beamed upon my mind. Imagination presented to my view stages of appeal, one or even two, eliminated: so much delay, expense, and vexation saved: the matter of a mixed mass, composed of *salaries* and *fees*, kept in the pocket out of which in the present state of things it is snatched. This hope, alas! has now, for some time past, been dissipated. "My wish was father," my imagination mother, "to that thought." Still would sit their two *Honours*, pressing, not less heavily than at present, with their dead-weight upon justice. Delay, far from being diminished, would, as above observed, be increased; for while with their sitting parts on the High Bench, they were constituting part and parcel of the living stock of functionaries of that court, the business of their own court would be at a stand.

Of this disastrous truth, a sad confirmation is afforded (how could I overlook it?) in and by one of the very sentences, in which his Lordship makes mention of this transference. "I have power," says he, "to ask for the assistance of any, or all of the Judges of Westminster Hall; and I know not why I should not have the power of asking to be assisted by the presence of the Master of the Rolls and the Vice-Chancellor, *when necessity requires;*" having in view, of course, the familiar phrase "ask and have." Now, then, what is clear is — that no such "resolution" can ever have taken possession of his Lordship's mind, as that of absorbing into and swallowing up in, his own noble and learned maw, the whole power of all those same learned judges put together: as well might he swallow up those same learned persons themselves — flesh and blood, bones, wig and gown, and all; nor at the same time is any distinction expressed, between what he proposes to do by the two Equity judges — the Master of the Rolls and the Vice-Chancellor — on the one part, and what he proposes to do by those same common-law judges, on the other part. And as to the resolvedly devoted pair of judges, what is it that it is his resolve to do? — to keep them tethered down to his girdle, in his own custody, during the whole of their official lives? Oh no: only "*when necessity requires:*" and this her *requisition* — when is it that Dame *Necessity* will make it? *That* will depend altogether upon his own noble and learned discretion. To his Lordship, on each individual — yes, *individual* — occasion it will belong to determine in what place or places they shall be; and, for aught that anybody else will be able to tell, they may, at all times, be in a state of vibration, like a pair of pendulums, between the Court of Chancery and their own proper courts.

As to myself and my own labours, — I have spoken as above, of the retribution they have received by the tokens of approbation here and there expressed in relation to them. In and by the following passage, with which this same speech of my noble and learned friend concludes, I cannot but behold a rich reward — honourable to me on whom it is bestowed

— not much less so to him to whose magnanimity, under such provocations as it has happened to him to receive from me, I am indebted for it: — "It was a remark," says he, "of a learned and venerable friend of mine, one of the greatest sages of the law — I mean Mr. Jeremy Bentham — that one of the greatest evils arising from vacations was the shutting up the courts at the very time when suitors might have the greatest occasion to require access to them. I do not think I can subscribe to the whole extent of his doctrine on this point; but, undoubtedly, that there is a great benefit to be conferred by keeping always open some part of the court for pressing business, I most entirely agree with him in holding."

On the social part of my mental frame, this token of kindness has made the sort and degree of impression which it could not fail to make: but neither by this nor any other impulse, am I to be turned aside from my duty to that public, to the service of which the labours of my life have so long been devoted. That I am not to be corrupted by gold, is already pretty well known: it will now be known that I am not capable of being corrupted even by gratitude.

Would that, by anything I could say or write, I could turn aside my noble and learned friend from bit-by-bit (the word is his) — from bit-by-bit, and ill-considered, unconcocted, incoherent, and unseasoned, supposed reforms or improvements in legislation. My portfolio, my arms, my heart, are still and always will be open to him. Had he but on this occasion had the command over himself to resort for information to that source from whence, at his desire, information on kindred subjects had been so amply communicated to him, and in some sort profited by, (alas! that it had but been a little more profited by!) the disappointment to which so insufficiently considered a proposed and declaredly-resolved-on arrangement seems inevitably doomed, with the mortification inseparable from the failure, would not (I cannot but think) have been experienced.

To the functions of judicature, then, let him confine his exertions and his "hope of glory:" as to legislation, so far as regards origination of measures, leaving the field to him, whose proficiency in that branch of art and science was recognised some years before the existing successor of Lord Bacon saw the light.

Never, without violence done to my feelings, is condemnation, how loudly soever the occasion may appear to me to call for it, passed by me upon any part of the character or conduct of a friend; never, without satisfaction to those same feelings, is commendation, when it presents itself as deserved, paid by me, even to an enemy.

A subject which I contemplate with sincere and unalloyed delight, and with which it rejoices me to be able to conclude this unavoidably polemic discussion, is the dispatch — the altogether unexampled dispatch — spoken of by his Lordship in this same speech, as given by him to the business of that court, on which it casts so bright a lustre. In what light does it not place the *job* — the justice-obstructing court, set up by the most indefatigable, implacable, and irresistible enemy to justice and human happiness, that his situation was ever filled by: — that *job*, which Romilly, one of the earliest and most attached of my disciples, so strenuously and so fruitlessly fought against.

By the "indiscriminate defenders of right and wrong," this dispatch, with the relief afforded by it to suitors, is murmured at and attacked. Against these attacks, one part of the defence I had rather not have seen. When convinced, from the statement of the party's own advocate, — convinced of his being in the wrong, — this judge's way (he tells us) was — to keep the other causes waiting, while the advocate, on the other side, was taking up the time of the court, in labouring to prove his being so. Favourable and gratifying to advocates is, of course, such patience, such licence, such indulgence. Yes, indeed, to advocates — but what is it to suitors? This comes of having judges, whose apprenticeship, instead of being served under masters whose interest is identical with, is served in fellowship with those whose interest is irreconcilably opposite to, that of the whole people besides, in their capacity of suitors, and those who, but for the prohibitive factitious expense, would be suitors. But this is human nature. Who is the lawyer's neighbour? His brother lawyer: this is the man whom he loves next to himself. This is lawyers' law and lawyers' gospel. Being competitors, they, indeed, like harlots of the other sex, hate one another: but not the less do they, like wolves, herd together, and join in hunting and devouring their common prey.

Not quite so much regard as is wished by the Bar is paid by him (I hear it said) to anterior decisions. May be so: but, be it ever so little, quite as much is it as is wished by me. Are you an Equity judge? Pay no regard at all (say I) to anterior decision: set before you, on each occasion, this one end in view — this one principle — the *disappointment-minimizing* principle. Pay any regard to them? Why should you? No otherwise contributory to human happiness was any one of those decisions, than in so far as it operated in conformity to that all-beneficent and all-comprehensive principle. If so, then why not, under its guidance, take the direct road, instead of passing through those tortuous tracks, which, intentionally or unintentionally,

have so continually turned themselves aside from it? When, with *equity* on his lips, a chancellor first entered upon this devious course, what regard paid he to the anterior decisions of the till then only class of judges — the *common-law* judges? For justifying such his deviation, what plea could he have made, if it was not this? "Pursuing on this occasion *their* rules, the judges would produce disappointment: taking the course *I* take, I prevent it." Such, in spirit and in purport, must, if questioned, have been the defence of the first equity-administering judge. Such, at any rate, is the doctrine which, in my proposed experimental measure of law reform — my Equity Dispatch Court Bill — I venture to preach — the course which I propose that my dispatch court judge shall be empowered and called upon to take: he to whom it appears that he "knows cause or just impediment why" the same should not be taken, let him "declare it."—"This the first" and "last time of asking."

Not only on the subject in this speech mentioned by him — namely, the undiscontinuity of the administration of justice, — but moreover, on that which, on the present occasion, is the principal subject, — namely, the most appropriate number for the seats on an official bench, — before the public eye, and thus courting that of my noble and learned friend, has, for this twelvemonth or more, been *my opinion*: witness my *Constitutional Code*,* on which occasion, with scarce an exception, *single-seatedness*, as opposed to *many-seatedness*, is advocated as the only defensible arrangement. True it is, that the only offices there under consideration are those of the administration department: and those here in question belong to the judicial department. But in that section, with its sixteen pages, not an argument is there which applies with less force to the judicial than it does to the administrational department. In another part of that same work,† to the arguments which, as above, apply in common to both departments, are added others, which, in an exclusive or peculiar manner, apply to the judiciary. To these, they not being yet in print, I may perhaps, before I have done, give insertion here.

* Ch. IX. MINISTERS COLLECTIVELY; § 3. *Number in an Office*: Vol. I. p. 216.
† Ch. XII. JUDICIARY COLLECTIVELY; § 9. *Number in a Judicatory.*

II. OBSERVATIONS ON THE BANKRUPTCY COURT BILL.

THAT the "rights" in question "may be enforced with as little *expense*, *delay*, and *uncertainty*, as possible" — this (and in these words) is the professed end in view, as professed in and by the preamble.

Thus much for *profession* — placed thus, and with uncontrovertible propriety, in the front of this important instrument. Between this profession and practice, let us now take the earliest opportunity of observing what sort of *agreement*, or other relation, has place.

I. First as to *expense*. This has two branches: one, that which is charged upon the public stock; the other, that which is laid upon the shoulders of the parties.

First, then, as to that part of the expense which is charged upon the public. Here presents itself, to the very slightest glance, and without possibility of contestation, ground sufficient for denominating the *judicatory* a pickpocket *court* — and the measure a pickpocket measure.

Judges, in number four, to do the business of one: superfluous situations with superfluous salaries, three out of the four.

Instituted by this bill are two sorts of courts: the one first mentioned the superior of the two — this to act in lieu of that which at present is held by the Lord High Chancellor: the other — the inferior — to act in lieu of those which are at present held by the existing Commissioners, seventy in number.

In the superior court, at present existing, and by this determined to be superseded, what is the number of the judges? *Answer:* Number, one: one, and no more.

Here, then, is innovation: and for this innovation, what reason assigned? None whatever: no, nor so much as the shadow of one. But this determination — this *effect* — has, like every other effect, its *causes*; and, in particular, its *final* cause — its end in view: and this end in view — what is it? *Answer:* Until some other shall have been assigned — profit to the Lord Chancellor — the author of it: profit to him in the shape of *patronage*.

Now as to the amount of public money thus caused to be wasted; and of the private emolument for the sake of which the waste is ordained.

The expense is distinguishable into two parcels: that which is laid *on* the shoulders of the public at large; the other upon those of the individuals interested.

1. First as to that which is laid on the shoulders of the public. Mark well the items of it:

Lords' Bill, page 16, § 44: in the Commons' Bill, nothing on the subject making its appearance.

1. Chief Judge, ...	£3,000	0	0
2. Puisnes, three, ...	6,000	0	0
3. Commissioners, six, . . .	9,000	0	0
4. Chancellor's Secretary of Bankrupts, ...	1,200	0	0
5. Registrars, two, ...	1,600	0	0
6. Deputy Registrars, eight, . .	4,800	0	0
7. Secretary's First Clerk, . . .	500	0	0
8. Secretary's Second Clerk, . .	300	0	0
	£26,400	0	0

EVENTUAL
PENSIONS OF RETREAT.

1. Chief Judge, ...	£2,000	0	0
2. Puisnes, each, ...	1,000	0	0
3. Commissioners, ...	1,000	0	0

SUPERANNUATION PENSIONS,
After Forty Years' Service, or Disabilitative Bodily Affliction.

1. Secretary of Bankrupts, . .	£600	0	0
2. Secretary's First Clerk, . .	250	0	0
3. Secretary's Second Clerk, . .	150	0	0

Now then for the several functionaries thus appointed and salaried.

1. As to the three *Puisnes*. What is the *use of them?* None whatever. What is the *pretence* for them? Pretence *alleged*, none whatever. Pretence *insinuated*, perhaps this: — namely, that which is, perhaps, in § 1, at the bottom of the words, "shall be and constitute a court of *Law and Equity*." Now then, before the word *equity*, why insert the words "*law and?*" *Answer:* Because, whereas a court, which is called a court of equity, and nothing but a court of equity, *has* in it but *one* judge, and therefore is not understood to *need* to have more than one judge: on the other hand, a judicatory, which is called a court of *common law*, has always had four judges, to whom has been recently added another, and is therefore understood to *need* to have four judges. This being the case, by these same well-imagined words "*law and*," to all men who, superior to public opinion, are determined to concur in picking the pocket of the public of £6000, reasons in abundance will be furnished: by *these* words, at any rate, if not to any other words in the same number; though for these same *three* situations, by no other person in these same words will be seen any reason at all, or so much as the shadow of one.

The *Court of Exchequer*—may not this judicatory have been looked to as a sort of *prop* to the pretence? — seeing that in this same court of Exchequer there have been in all days *four* judges, and now of late days, *five:* and, as this judicatory acts sometimes according to equity rules, as well as sometimes according to common-law rules (what a system!) this idea of it may (it was hoped) be suggested by the words "*law and equity.*" Good. But what will their three puisneships be the better for this *precedent*, such as it is? Of the business, the cognizance of which belongs in common to both, has the four-seated judicatory ever had — what shall we say, a fourth, an eighth, a tenth part—of that which the chancery court has had? Not it indeed. In other words, has it had a fourth, sixth, eighth, or tenth part of the confidence? Not it indeed.

2. Next, as to the "*Secretary of Bankrupts*" under the new court of Bankruptcy, as it is called. What is he to do? *Answer:* What the secretary of bankrupts under the "*Chancellor's* court of Bankruptcy" used to do, will of course be the answer, if any answer be attempted to be given. And under the Chancellor's court, what was it that the secretary of bankrupts used to do? In the business of procedure — of judicial procedure — absolutely nothing, if I can believe my eyes. Look over all the books that have ever been published on the subject of bankruptcy: what one piece of business will you see stated as being done by him? Not one. Under the denomination of registration would come the operation performed by him in relation to bankruptcy, if any operation relative to that business had been performed by him; and in that case it would fall to be performed by the functionaries instituted by the bill, under the name of *registrars*. But the case is, that no such operation was performed by him. What, then, is it that he used to do? If anything, that which a dishonest porter sometimes does at the house of a nobleman, when, for the confession that his lordship is at home, he exacts a fee for admission into his lordship's presence.

If, then, by the learned lords and gentlemen concerned in the drawing up of the bill, it had been intended that, for this same salary of £1200 a-year, anything should be done, that which it was intended should be done by him would in this same bill have been specified; but in no part of it have I been able to find any such thing specified.

A curious enough circumstance is this. Under what title is it that this same £1200 a-year is given to him? Under the title of Secretary to the new court substituted to the Lord Chancellor's court — namely, the so called "Court of Bankruptcy?" No; but under the title of "*the Lord Chancellor's secretary of bankrupts*," a denomination by which, in this bill, he is constituted a functionary of and in a judicatory, which by this same bill is put out of existence.

3. Then comes the secretary's *first* clerk,

salary £500; and for this same £500, what is it he is to do? *Answer:* Help his master while doing nothing.

4. Lastly comes this same secretary's *second* clerk. And what is he to do? *Answer:* Help his master and his fellow-servant while they two are doing nothing.

Meantime, as to this part of the business, one thing there is that fills me with astonishment. Money matters are all these. Mention of them — where is it to be found? In the bill brought into the House of Lords, and printed for the use of the House of Lords. Where is it that it is *not* to be found? In the bill moved for, that brought into the House of Commons, and printed for the use of the House of Commons. At the moment at which I am writing, no provision is there for this part of the expense. Provision? No; nor so much as any the least intimation of any expense which there was to be. Everything of the sort remains to be introduced in the form of an *amendment*. Of this manœuvre, what was the object? The answer I must leave to those who are conversant with parliamentary manœuvres; to me it is a perfect mystery.

A money bill — a money bill, in effect as well as form — a money bill, with all the money clauses, the sums not left in blank, but *specified* — brought into the House of Lords; into that branch of the constitution in whom the exercise of any such power is a violation of the declared principles of that same constitution: those same clauses not to be found, any one of them, in the bill brought into the House of Commons — in the bill brought into the only house which is competent to the insertion of them: this same House of Commons' Bill being, at the same time, in the wording, in all other particulars, identical with it; save and except § 18 and 42, nothing corresponding to which has place in the Lords' Bill: though there is not, in either of them, anything that could constitute an objection to its being there.

Mark now the considerations, which in the mind of the *fundator incipiens* (to judge from all appearances) gave birth to the *financial* part of the measure; mark well the *order* in which they appear to have presented themselves. Matter of the existing grievance, the enormous multitude of the existing official situations, and thence the enormous bulk of the aggregate mass of emolument flowing from them. These sources of emolument being determined to be extinguished, and with them the emolument itself, now comes a problem to this effect: what is the maximum of the mass of emolument, which, consistently with the rules of prudence, can, on the most plausible grounds that can be found, be established in lieu of it? Such being the question, — for answer to it, presented themselves the several names of *offices*, now existing on this part of the field of judicature, — "so many there are of us," said they — "so many *pegs* you will see, on which, under the new arrangements, a number, more or less considerable, of new offices — one, two, and so on, as far as eight — may be hung; with salaries, raised, each of them, to the greatest height, which there can be any reasonable hope that the public will endure the weight of: and whereas, in the case of the existing system of the *hats* hung upon the pegs, the number is so great, and the aggregate of the expense consequently so great — hence it is, that under the new system, to the several pegs, with the comparatively small number of *hats* hanging on them, may, without scandal, be attached (it is hoped) a mass of emolument much greater than any which, under the existing system, has been attached to any one of the situations belonging to this part of the field of judicature. These matters — these matters of *primary* — not to say of *sole* — importance — being settled, the next question (it might seem) would naturally be — what are the *functions* which it may be proper to allot to these several official persons? — to attach to these several official situations?

But, to these same questions, the answer, if given, would be tiresome to the reader, still more so to the draughtsman, and, not impossibly, calling upon him for attainments, for which he might rummage his mind longer than would be agreeable to him, before he found them: and thus it was that the salaries were left to stand upon no better ground than what has been seen. Such, as will be seen, the number of these pegs, all of them hollow and empty. On the surface, the name of an office; beneath it — within it — functions, none: "a beggarly account of empty boxes."

These same sweets of office (the salaries) being thus as yet *in petto*, remain to be brought upon table in the sort of *charger* styled an *amendment*. In addition to this amendment, or string of amendments, or rather in lieu of some of them, one other amendment, or string of amendments, I would venture to propose. Instead of being wasted upon three logs, designated by the style and title of "*other judges*" — as if for the purpose of standing in the way of the one only efficient judge styled *the chief judge*, — let the £6000 a-year be *sans façon* put at once into the pocket of their creator and patron *designatus* the noble and learned father and author of the measure. Yes: seriously it is — yea, in sober sadness — that I come forward with these amendments. *Waste of money*, the same: but from the list of the public functionaries, of whose emoluments the matter of corruption is constituted, three would thus be struck off: and, what to so many thousands of unhappy and legally plundered debtors and cre-

ditors is still more sensibly important, so many instruments of certain delay and probable misdecision, and exemption from responsibility, annihilated.

Thus manifest are now the tokens of self-conscious guilt, which have betrayed themselves in the face of the measure. In an ordinary case, the sums are left in blank; left to be filled up in the committee. Even this is bad practice; and bad practice recurred to, not without a correspondent bad purpose. For, how many are the cases, where the sums belonging to the measure constitute the vital part of it; insomuch, that let the sums be so and so, the measure is a right and proper one; if so much more, a wrong and indefensible one. What, then, would be the proper course? *Answer:* To put figures in every instance — a general understanding having place, as at present, that in a certain stage of the business the propriety of this will come under discussion.

So much for ordinary practice.

But, in the present case, what is the course taken? Not merely are the sums left in blank, but the sections (16 in number,) of which the sums in question are the subject-matter, have not, any one of them, a place in the bill, as printed by order of the Honourable House. So that now, on Tuesday October the 4th (the day to which, after a struggle to prevent adjournment, adjournment was made of it,) this part — the vital part — of it — the most manifestly and flagrantly objectionable part of it — will not be before the House.

Yet, for information thus indispensable, a *succedaneum* was at any rate to be found. And this *succedaneum* — what was it? A verbal statement by the Attorney-General: against misconception, against misrecollection, no security. Time requisite for consideration thus denied; and, for this miserable advantage, such as it is, the course taken so extraordinary—not to say (though so I should expect to find it) unprecedented.

II. So much for expense to *public:* of expense to *suitors*, a little further on. Now as to *delay;* after noting, *en passant*, that of delay, expense to *suitors* is an accompaniment inseparable.

Mark here too the sort of relation between *promise* and *performance*. *Promise*, delay minimized; *performance*, by addition made to *number* of *stages* of jurisdiction, not to speak of other causes, delay more than *doubled:* to the two stages found in existence, three others *added:* and note — that, while in each stage it is only in a *retail* way that delay is produced, — it is in a *wholesale* way that, where an additional stage of jurisdiction is the engine, this nuisance is manufactured.

To come to particulars: stages found in existence, two: —

1. Immediate judicatories, the courts held (all upon the same stage) by the existing seventy commissioners:

2. Appellate judicatory, the court held by the Lord Chancellor.

These stages, the only ones: from Chancellor to House of Lords, appeal none.*

Stages additional erected by the *bill, three;* total number, *five:* they here follow altogether; *ascendendo*, as before: —

1. Immediate judicatory, court held by one commissioner. See § 6, 7.

2. Judicatories next above *that* — say *appellate judicatories* of the *first*, meaning the *lowest*, order; two courts, styled Subdivision courts, held by *some three* (quere, *what* three?) out of the six commissioners above mentioned. Court appealed *from*, the six courts constituted by the six commissioners, each acting singly, as above. See § 6, 7.

3. Appellate judicatory of the *second order*, the judicatory of which the style and title is "*the Court of Bankruptcy*," — with its four judges, as above; but under the name of *Court of Review;* courts appealed *from*, the two subdivision courts just mentioned. See § 2.

4. Appellate judicatory of the *third* order, the court held by the Lord Chancellor: court appealed *from*, the said court of bankruptcy, under the name of the *court of review*. See § 3.

5. Appellate judicatory of the *fourth* order, the court composed of the House of Lords: court appealed *from*, the court held by the Lord Chancellor. See § 37.

III. Lastly, as to *uncertainty*. Promise, minimization of it: performance, *augmentation;* maximization, the magnitude of which bids defiance to all bounds. On this head, matter for a volume might be found; a few specimens may (it is hoped) suffice; at any rate, they will exhibit as much as, perhaps more than, will be found endurable.

1. Under the head of *delay*, mention has just been made of the *Immediate Court*, held by a *singly-seated* commissioner, as constituting the first stage. But this same first stage is wrapt up in a thick cloud.

In § 6, it is stated, and without room for doubt, that of the six commissioners therein mentioned, every one may sit and act by himself; and so likewise in and by the next § 7; and thus we have a sort of promise or shadow of six *single-seated* judicatories. But these same six single-seated judicatories, supposing them to have existence, who can say how many of them, and at what time or times respectively, they shall be in existence? Look here to the text. In and by § 6, it is provided, that "the six Commissioners may be

* "From the decision of the Lord Chancellor in cases of bankruptcy, there is no appeal."— *Archbold on Bankruptcy*, p. 21, 2d edition, anno 1827.

formed into two Subdivision Courts;" and this provision stands *before* that by which authority is given to them to act *singly*. Now then, if and when of these *six* functionaries are formed *two* courts, each court with *three* of the six in it, how many will there be left to act in *single-seatedness*? And in what cases, and on what occasions, will they so act?

"The said six commissioners may be formed into two subdivision courts," says § 6 — "two subdivision courts, consisting of three commissioners for each court." Well then, these same two subdivision courts — *by whom*, at what *time* or times, in what *manner* — by means of what *written instrument* — are they to be *formed*? In regard to each of these same six commissioners, in whom shall be the determination — at what time and times he shall or may be acting in single-seatedness — at what time and times in *triple-seatedness*, in company with two, and which two of his colleagues, in a *subdivision* court?

What a source of *uncertainty* all this! — and moreover, along with and by means of the uncertainty, what a source of *corruption* and *intrigue*!

When the *assets* amount to half a million, and a single debt to a tenth or a fifth of that sum, what intriguing to get the case brought under the cognizance of this or that commissioner, foreknown to be, or, for the purpose, made to be, favourable! In the existing *three-seated*, *four-seated*, or *five-seated* judicatories, as it may be, corruption in this form can scarcely have been practicable. By the single-seatedness it may be seen how, in this case, it may be *let in*. By the single-seatedness? True: but against single-seatedness no objection is thus formed; for not without the help of the power of *choice*, left thus arbitrary, and the exercise of it thus unscrutable, as above, can corruption insinuate itself.

Note how the cloud thickens. — *Subdivision courts*: yes; subdivision is the word. By this word we are sent of course to look for the word *division*: by the sort of *court* called a *subdivision court*, for another sort of court called a *division* court; by the mention thus made of these two parts, for the *whole*, of which they are parts. Look ever so long, no such thing should we find. Even if, instead of *subdivision court*, the appellative were a *division court*, still we should be sent by it to look for the *whole* of which division had been made.

Actual division court decidedly and certainly established, none: but a sort of *potential* division court, *in nubibus*, hanging over the field, in the clouds, in the capacity of being brought into existence, is this: "The said six commissioners," says § 6, as above, "*may* be formed into two subdivision courts, consisting of three commissioners for each court." Now then, for and during any length of time whatsoever, suppose them to remain *not* thus formed: are they to remain idle? No; they constitute a court, of which no subdivision nor yet division has as yet been made, nor perhaps may ever be made: here then we have our lost sheep — the *division court* we were looking for. In this view of the matter, the *division* court (it should seem) is the *actual* court, to which, though only by implication, existence is given, in the first instance: *potential* courts latent — nothing more, the two *subdivision* courts; for, be the object what it may, existence it must have, before it can be divided: much more, before it can be subdivided.

Another puzzle. According to this same section 6, *two*, and no other, is the *number* of the subdivision courts, into which the six commissioners are to be "formed." But now comes the very next section (§ 7) by which they are made *formable* into a court or courts containing respectively any *other* number not greater than six. For (says the bill) "In every bankruptcy, it shall and may be lawful for any one or *more* of the said six commissioners to have, perform, and execute all the powers, duties, and authorities by any act or acts of parliament now in force vested in commissioners of bankrupt, in all respects as if . . . . . appointed . . . . . by a separate commission under the great seal."

Now for a simple amendment; which made, so far as regards the number of these functionaries, everything would be as it should be. After the words "*any one*," *dele* the words "or more;" and thereafter, after the words "*in all respects as if*," insert the word *he*, and *dele* the words, "*or any one or more of them*." Thus should we have single-seatedness, with the *institution* itself in all its utility, and the *designation* of it in all its intelligibility.

Thus, moreover, would be removed the cloud raised in § 6, by the talk about "*references* or *adjournments*," and "*sickness*, or other sufficient cause;" — "references and adjournments," which are to be made by a single commissioner, "unless" he, the maker thereof, "shall think fit otherwise to direct." Yes, in the very act of doing the thing in one way, the man who is doing it is to "*direct*" — whom? — himself, or somebody else, not mentioned — somebody else (guess who!) to do it in a different way.

At Westminster school, some three or four and seventy years ago, I remember we used to be taught to make in Latin certain so-called *nonsense* verses, as a preparatory exercise for enabling us, one day, to make verses that should wear the appearance of sense. In the present instance, it looks as if the noble and learned schoolmaster, having in the course of his studies on education heard of this, was sending *himself* abroad to learn,

by exercising himself in the art of making nonsense *laws*, how, one day, in God's own good time, to make *sense laws*.

But here the examination of this exercise must end, or at least pause: for, if continued to the end of the bill in the same strain, such is the length of the exercise, that a volume — who can say of what size? — might be occupied by the examination of it.

Now for an argument, which is nothing to the purpose: — "By the abolition of these seventy commissionerships, I lose so much patronage: for, of the patronage substituted, the *value* is not so great as of that which I give up."

Answers, these: — 1. If you did your duty, the patronage would not be *worth* anything to you. If you did your duty, you would, in the instance of each situation, fill it with that man who, in your judgment, was most fit for it: and, against that man's being most fit for it, by whose filling it you would *get* anything, the chances are as infinity to one.

2. Supposing, however, that the situations in question are *money's worth* to you, and that, for indemnifying you for the loss of this money's worth, you ought to receive a compensation, *patronage* is not the shape in which it ought to be given to you: the shape should be — that of an equivalent addition made to the *salary* attached to the office. Why this shape? *Answer:* Because, in addition to the evil produced by the institution of these worse than useless offices, — so far as regards *emolument*, to put you in possession of a quantity of *emolument* to a given amount, will cost the public more, if given in the *patronage shape*, than it will if given in the *official-salary shape*.

3. As to *patronage*, under the generally established system, taken as it is, so far from affording a security *against* unfitness, it operates as a security *for* unfitness: for, be the object of the patron's bounty who he may, the less fit he is for providing subsistence for himself in and by any other profit-seeking occupation, the more pressing is the need he has of the relief that would be afforded him by the official situation, whatever it be.

4. But, not content with the *profit* of *interestedness*, nothing will serve you, but you must have the *praise* of *disinterestedness*. Would you deserve it? Every penny, then, must you give up, of this useless — this so much worse than useless — patronage. This praise of disinterestedness, what is it that you want it for? Only that, under favour of the delusion spread by it, you may obtain the profit of *interestedness* to the greatest amount possible.

Not that it is any opinion of mine, that you ought to be *made* to act as if you were disinterested: not that I want you to be made to *lose* any part of the emolument lawfully and honestly attached to the situation to which you have given your acceptance. It would be against a fixed principle of mine — the disappointment-*preventing*, or (as far as prevention is impracticable) -*minimizing* principle: — that all-comforting principle — first-born of the *greatest-happiness* principle: — that principle which affords the only reason (nor can there be a more substantial one) for securing to every man his *own*, whatever it may be — black men and white men, in a state of slavery, excepted.

Now as to expense to *suitors*. To this topic reference was made, in speaking of the expense to the public. Alas, poor suitors! correspondent to the disinterestedness of the noble and learned arbiter of your fate, is the tenderness of the mercies, to which, on this occasion, you are consigned.

Within the all-enveloping cover of the rule-and-order-making power, which you have seen, is concealed the power of plunderage without stint: nothing legislated upon; accordingly, everything *left* to be legislated upon: and whether, by a noble and learned person, whose relish for fees has been so conspicuously self-declared, any labour or ingenuity, which can contribute to convey to the watering mouths a treat so delicious, is likely to be left unemployed, is a question, the answer to which may be left to any person whose patience has carried him thus far in the perusal of these pages.

Pre-eminently delightful to the eyes of a learned lord or gentleman is the case, where, within his grasp, there exists already a *fund* to draw upon. In this predicament are in general the cases, by which the forty millions of pounds, or thereabouts, now in the court of *chancery*, have been placed in it. When the hands in which is lodged the money composing the remuneration for the labours and merits of learned lords and gentlemen, official and professional, are those of *trustees* — persons to whom no part of it is understood to belong, — in this state of things, at parting with it, no such pang is, generally speaking, felt, as is felt by those in whose case the money taken out of their pockets is their own: always excepted the case, in so far as it has place, where the trustee, out of the money placed in his hands for the benefit of others, makes money for himself. At each fee, under the name of *costs*, pumped out of him, a party or proprietor of the money does feel a pang, and, as ruin approaches, may at every stroke of the pump give a squeak: the *fund* has no feeling, and takes it all in patience.

In an ordinary case, — not a farthing, but in the shape of a *fee*, is capable of producing a *denial of justice:* and such has been the effect of it, in every instance in which the

farthing has been unobtainable: and such it has been, in the instance of every man, from whom, by the machinery of what is called *justice*, the uttermost farthing has been extracted.

In an ordinary case, — though one of the parties is always in a state of *sufferance*, another may be in a state of *enjoyment*: and in this state is every man, who, by the ever-ready and never-failing assistance of learned lords and gentlemen, official and professional, keeps the money of another in his hands. But, in a case of bankruptcy, all parties, on both sides, are in a state of sufferance and affliction. In Bankruptcy court, accordingly, learned lords and learned gentlemen have, for their accommodation, this agreeable circumstance, namely, that from this part of the field of plunderage, no cry of *denial of justice* is wont to issue.

Out of this so convenient tank, how many *horse-power* is that of the pump, which the learned lord so skilled in *hydraulics*, will, on this occasion, put to use? To his own discretion has everything of this sort been left by him. But, eyes there are which are upon him, as he will see: and, to such objects, the eyes of succeeding honourable gentlemen are not likely to be quite so stone-blind, as at all times have been those of all their predecessors.

Now then for the fees which are provided by this act; that is to say, by the act passed by the Lords alone, and in a part thereof, of which the representatives of the people have not as yet (October 7) been allowed to see anything.

§ 41. For a *fiat*, in lieu of a commission of bankrupts, to the Lord Chancellor's secretary of bankrupts, £10. Quære, *by* whom this money is to be paid? this is not mentioned.

§ 42. Fees to be paid — Quære, for what? — nor is *this* mentioned, — £15.

Person *by* whom it is to be paid, the official assignee: *time*, "immediately after the choice of assignees by the creditors . . . . . out of the *first* monies which shall come into his hands." Quære, how are they to be *got* into them? Person *to* whom it is to be paid, the Accountant-General. Money taken out of the pockets of those afflicted persons for a *commencement*, and to a *certainty*, £25.

Now for other sums, *not* certain, nor *ascertainable*, which, by this their said Lordships' bill, are destined to be taken out of those same pockets. First comes the sum of *one pound*. And for what, and how many times to be repeated? Answer who can: I, who am copying it, am utterly unable. The clause follows in these words: —

1. "For *any* sitting of the court of bankruptcy, or of any *division judge** or commissioner thereof, [other than the sitting at which *any* person may be adjudged a bankrupt,]

2. "or *any* sitting for the choice of assignees,

3. "or *any* sitting for receiving proofs of debt prior to such choice,

4. "or *any* sitting at which such bankrupt shall pass his or her examination,

5. "or *any* sitting at which *any* dividend shall be declared,

6. "or any sitting at which the bankrupt's certificate shall be signed by the commissioners."

Doubts pour in here in torrents. The *one pound*, — is it, during the *whole* of the proceeding in the case of the bankrupt in question, to be paid *once*, and once *only*? — or is it to be repeated? The *figures* are here inserted for the purpose of expressing the *number* of the *times* at which, according to my conception, it was intended to be repeated.

Then, as to the word *other*? The brackets, here inserted, show how *far*, according to my conception, the *application* of it was meant to be carried; but, there is nothing that I can see, that can prevent its being carried on to the end; namely, to the end of the clause here distinguished by figure 6.

Then, as to the application and import of this important word *any*. The requisition made by it, — will it be *satisfied* by *one* pound, *once* paid; namely, for the *sitting*, which, for the purpose in question, is, on each occasion mentioned? — or, on each such occasion, is it to be *multiplied* by the *number* of the sittings? On this last interpretation the *meaning*, at any rate the *effect*, of the word *any*, is the same as that of the word *every*.†

The stock of uncertainty and unintelligibility afforded by this same 42d section is not yet exhausted. For, here comes a mass of self-contradicting nonsense, a parallel to which could scarcely be found, even in the whole statute book. In line 14 of this section stand the words that have been seen, to wit, "or *any* sitting at which *any* dividend shall be declared:" hereupon, in the very next line but one — namely, in line 16, — come these words — to wit, "and for *every such* sitting at which a dividend shall be declared, the sum of three pounds." Now for a lesson in arithmetic. To

* Note here, a *Division* judge: an animal coming forth in the way of equivocal generation. See, as to this, what is said under the name of a division judge — no such person is in any other part of the Lords' bill named.

† For several years past, I have occasionally been occupied on a work to be intituled *Nomography;* in which, amongst other things, what depends upon me is doing, towards shutting the door against such doubts, and the ruin with which they are pregnant: — doubts, raised by the tenor of acts of parliament, and other written instruments, by which everything that is dear to man is disposed of.

the *any one* pound, add *every three pounds;* what will the *sum* be?

Nonsensical as it is, here at any rate may be seen *one* conclusion that may be deduced from it, and is incontrovertibly warranted by it. Here, then, for the purpose of giving increase to money poured into lawyers' pockets, increase is given to expense — to *factitious* expense; and, for the purpose of this increase, increase given to *delay* likewise: so many sittings at each of which a dividend is declared, so many three pound fees. For this service rendered to the profession, at the expense of the afflicted, a premium offered to all those in whose power it is to earn it: this, in performance of the promise made in § 1 — "that the rights . . . . . be enforced with as little expense, delay, and uncertainty as possible."

So much for these same *fees* and the *pockets* out of which they are to be pumped. But now what is it that is to be done with them? Short answer: Given to the noble and learned author of this bill, to do with them what the Duke of Newcastle claims a right to do with his own; that is to say, what he pleases. For the long answer see Lords' bill, section 41. *Person to whom* they are to be paid, "the Lord Chancellor's secretary of bankrupts — . . . . . paid . . . . to a separate account, to be entitled, the Secretary of Bankrupts' Account:" and "all monies to be paid into the said account shall be subject to such general orders touching the payment in, investment, accounting for, and payment out of such monies, for the purpose hereinafter provided, as the Lord Chancellor shall think fit to prescribe." There ends this 41st section.

By this provision, an instrument to the consideration of which the mind is unavoidably led is that, over which, when, into a certain court, money is to be paid, the money (it has been said) is told. The instrument is a *gridiron:* and the court is the *court of Exchequer:* meaning the court called the *Receipt of the Exchequer.* For the telling of these monies, what is it that his Lordship "may think fit to prescribe?" *Animate* instrument — animated by the £1200 a-year — *animate* instrument, part and parcel of his *live* stock, his above-mentioned secretary: this is already "*settled;*" but the *inanimate* instrument — part and parcel of his *dead* stock — this remains to be *settled.*

The *gridiron,* if that be the species of instrument employed for the business of this *tellership* — what shall the individual instrument be? Shall it be the one kept, as above, in the Exchequer, and from thence borrowed? or shall it be a bran new instrument kept for the purpose in the court of bankruptcy, under the care of the said Lord Chancellor's said secretary of bankrupts?—in which case, with the help of a little improvement, *à la mode de Brougham,* it might moreover be made to serve for the telling of the forty millions which in some way or other are already at his Lordship's disposal: and, in the mean time, till a proper gridiron can be made, might not that gridiron be borrowed, which, had he not forgotten it, a prophet of these days was to have broiled himself upon, and which cannot but remain clean as a penny, not having been put to its destined or any other known use?

But now as to Mr. Secretary — "the Lord Chancellor's Secretary of Bankrupts" — I know not whether I have not his secretaryship's pardon to beg. Somewhere before this (so I cannot but suspect) I spoke of him as having nothing to do. It seems now to me that he has a great deal to do — he has all this money — this mass of money to an unknown amount — which he is continually to be receiving, and which is by him to be paid "once a-week or oftener" (for the learned stomach cannot stay long,) "as the Lord Chancellor shall think fit to direct" . . . . "to a separate account to be entitled 'the Secretary of Bankrupts' Account.'"

What I have humbly proposed, as above, is, that of all the above-mentioned fees (of the receiving and disposing of which the sole occupation of his secretaryship seems to consist) not *one* should be torn from the afflicted persons interested: and should this my humble proposal be acceded to, this occupation of his secretaryship — this his *sole* occupation — would be gone.

Before parting with his secretaryship, one more curious circumstance in relation to him I cannot forbear noticing. Under what title is it that his £1200 a-year is thus given to him? Is it under the title of Secretary to the court of *Bankrupts?* No: but under the title of "the *Lord Chancellor's* Secretary of Bankrupts." But by this same bill, the court in which the Lord Chancellor at present takes cognizance of bankruptcy business, is suppressed, and the business of it transferred to that same bankruptcy court. He is therefore (as it should seem) a sort of amphibious animal, living in two *media* at once: and, in despite of a maxim of holy writ and common sense, serving two masters.

Before this topic of expense — expense by fees extorted from the already afflicted suitors — is dismissed, note well one circumstance, by which, were it the only one, the sort of feeling this measure was brought forth by and all along nursed, would be instructively indicated. Of the *stock,* or say *fund,* out of which these fees are to be drawn — namely, the aggregate amount of the assets got in by the assignees — what is the magnitude? *Answer:* A magnitude so variable, that while in some instances it has amounted to half a million or more, in others it has been

so small, that the fees thus destined to be extorted, would absorb the whole of it. Behold here how, by men in power, their fellow-men are operated upon and worked at as if they were deal boards: the *money* thought of — that, and nothing else: by men, themselves without feeling (without feeling for other men,) their fellow-men dealt with and operated upon as if *they* had none. Who shall say in how many instances (if this bill of the Lord Chancellor's passes into a law,) in how many instances the whole of the bankrupt debtor's property, instead of being divided among his creditors, will be snatched from them and put into the pockets of the said Lord Chancellor's creatures.

But all this about the *fund* for fees is but a digression. It is high time to return. Speaking of the House of Commons' bill, "everything, I said, is there left to be legislated upon." To be legislated upon? and by whom? By whom but the noble and learned author of the bill. And, *how* and *where* does this appear? *Answer:* In the bill printed by order of the House of Lords.

Yes: to that instrument, which is the expression of the will of the House of Lords, and of the House of Lords alone — to that instrument have I been obliged to resort, that being the only instrument in which it is declared *how* it is, and by *whom*, that the money which belongs to the afflicted — to the insolvent debtors and their creditors — is to be disposed of.

Into two parcels is divided the money to be drawn from this so pre-eminently scanty source. Parcel the first — "fees .... such (says the bill, § 40) as are provided by this act:" Parcel the second — such (it continues) as are "set forth in any schedule of fees to be settled and allowed from time to time by the said Court of Review, with the approbation of the Lord Chancellor, and to be certified by them to both Houses of Parliament." Mark well — "settled and allowed by the said *Court of Review*, with the approbation of the *Lord Chancellor*." Of this presently.

Settled and allowed? And how settled and allowed? On the present occasion, in this § 40 of the Lords' bill, this is not said. What *is* here settled is, by whom? By this we are sent upon the look-out to see how it is — that is to say, by instruments how denominated, — by these conjunct authorities other matters are settled. Turning to § 2, we find that what is there appointed to be done is to be done by "rules and regulations" to be made in pursuance thereof.

We are thus brought to these same *rules and regulations*, on which occasion I venture to assume, that the sort of instruments thus denominated, are meant to be the same with those which, in § 11, are denominated "*rules and orders*" for regulating the practice of the court of bankruptcy, and in § 22, by the word *rules;* though in this case without the word *regulations* or the word *orders*. Be they called what they may, now comes the question — by what *authority* are they to be made? *Answer:* On different occasions, by two different authorities: namely, on the one occasion (by § 11,) by the Court of Review, with the consent of the Lord Chancellor; on the other occasion (by § 22,) by the Chief and other Judges, "with the consent of the Lord Chancellor." On the first of these two occasions, the subject-matter of regulation is unlimited, and all-comprehensive: in the other it is limited — confined to the nomination of official assignees.

Now for the difference between the two authorities; and the final cause of that same difference. The court of bankruptcy is the authority by which these same all-comprehensive *rules and regulations*, or say *rules and orders*, are to be made? Oh no: but the court of *review*. And why *not* by the court of bankruptcy? and why by the court of review? Why not by all four judges? — why by no more than three of them? and those three the three *puisnes*, styled by the somewhat whimsical title of "*other judges?*" Perfectly intelligible when once mentioned, though somewhat recondite reason, this: — namely, that by this means, with the convenience and benefit of *secresy* of procedure, of which presently, the noble and learned author of this bill might be enabled to savour the sweets of arbitrary power.

Not by the court of bankruptcy are these rules and regulations to be made, but by the court of review. And why *not* by the court of bankruptcy? *Answer:* Because, that in the court of bankruptcy there must be four judges — namely, "the chief judge and the three other judges." And why by the court of review? *Answer:* Because (as per § 2) the said judges, or any three of them, shall and may form a court of review: *any* three of them; which *three* may, therefore, be the three puisnes.

Is it, then, for no reason, that on this occasion, when *rules and regulations*, or say *rules and orders*, are to be made, the chief judge is so carefully left out? Oh no: it was for a very important reason: it was to secure obsequiousness, and under and by virtue of such obsequiousness, with secresy, as above, for a common cloak (wrap-rascal — *absit verbo invidia* — was, at one time, the name of a a species of large cloak,) to secure to his own noble and learned self, as above announced, the delight of savouring the sweets of arbitrary power (not forgetting fees.) The judge, who is thus left out, has no higher seat to look to: the three judges who are taken in, have each of them that same higher seat to look to: they are each of them in the case of a bishop

of Gloucester or Oxford, with Canterbury and York in view; not to speak of those bishoprics, such as London and Winchester, which are also blessed with an extra portion of that mammon by which the gates of heaven are shut against the possessor.

To speak more particularly and plainly (for I wish to be understood:) in the three possessors of the £2000 a-year each, he beheld so many aspirants to the situation which affords £3000 a-year. A thousand a-year, though it be but in expectancy, being thus part and parcel of the premium for obsequiousness, for being, on all material occasions, (according to the so constantly pronounced formulary) "*of the same opinion*" *subintellecto* with my Lord Chancellor, — *rebus sic stantibus*, on any such material occasion, for the purpose of any practical conclusion and operation, can the existence of identity of opinion be regarded as exposed to doubts?

For producing this same identity, on different occasions, different instruments have the approbation of this our legislator: in the case of twelve men, who, be they what they may, are rendered infallible by being put into a box, the instrument, in addition to the box, is *torture*. in the case of the three men termed "*other judges*," who must have eaten a hundred dinners in one or other of four great halls, and remained alive at least ten years after the last of those same hundred dinners. The instrument is £1000 a-year in expectancy: the £1000 a-year hanging in the air before the eyes of their respective minds, as does the New Jerusalem in the eyes of certain believers. In this latter case, the instrument is not in its nature quite so cogent as in the former case, but it is sufficiently effective for all practical purposes, and is to all parties a much more pleasant one.

Nor let it be forgotten, how variable are the members of the body, by whom, on different occasions, the several sets of rules and regulations, or say rules and orders, may be made, nor in what a degree on his Lordship's will and pleasure the composition of this same body has been made by him, on each such occasion, to depend. They may be made (these rules and regulations) on one occasion, one set of them, by the said three *other judges*; on another occasion, by any such two of them as it may please his Lordship to choose, with the addition of the chief judge. On ordinary occasions, this will of course, for the reasons above mentioned, be the said three "other judges:" but on this or that extraordinary occasion, a case that may happen is — that of the three, one having disappointed expectation, and being on terms more or less rebellious with his creator, may run rusty, while the chief of the four creatures continues to be everything that can be desired.

Had his Lordship given to these his three *puisnes* the power of thus legislating by themselves, he would have had no pretence for having, on this all-comprehensive occasion, anything to do with them. Had he taken the power to himself *alone*, the disposition would have been too glaring, still more revolting, altogether in the teeth of *precedent*, and completely exposed to responsibility. Wrapping them up in the same cloak with himself, and that a cloak of *secresy*, he metamorphosed his *mace* into a *wand*, and the court of review into the den of Cacus.

And here, peradventure, in addition to the £6000 a-year *patronage*, may be seen a *reason*, in a certain sense, for the adding the three so much worse than needless and useless, and, in respect of number unprecedented, judges, to the one needful and exclusively customary one.

I have said, — in the teeth of precedent. For, not more filthy in the teeth of *reason* is the arrangement than in those of *precedent:* for, in what instance, on the occasion of the power exercised by the making *rules and orders* (as the phrase is) have the judges of any one of the courts called *superior courts*, found themselves under the necessity of obtaining the consent of any authority superordinate to their own? and in particular, to that which stands next above them?

The *bag* is now cut: and the *cat* — has she not been let out of it?

Now for a most curious mess of muddle-headedness. To save the brains of the reader from the rack, before the *riddle* I feel it necessary to put the solution: it is *this:* — In the draughtsman's conception, the idea of the species of judge called a *commissioner*, is confounded with the idea of the entire of this newly-to-be-engrafted branch of the judiciary establishment — it is confounded with the idea of the *whole*, of which this same commissioner is a part. So much for the solution. Now for the riddle.

In § 38 of the *Commons'* bill, behold how the commisioners are spoken of as being members of the court of bankruptcy, as well as the judges. "And be it enacted," says the bill, "that the said judges and commissioners of the said court of bankruptcy shall, in all matters within their respective jurisdictions, have power to" do so and so. Had it stood as follows, that is to say, *The said judges of the court of bankruptcy, and the said commissioners, shall*, &c., the absurdity and confusion would not have had place. Was this a slip of the pen, an oversight of the clerk, or an error of the press?

To one or other of these causes it would, of course, have been to be ascribed, if with no more than the ordinary degree of inaptitude the bill had been penned. But in a bill, in which proofs of such never-till-now-exemplified inaptitude are so abundant, no ab-

surdity can be too gross to be ascribed to the penner or penners of it.*

So much for the solution. Now for the riddle. This same court of bankruptcy, — who are to be the members of it? "The chief judge, and three other judges," says § 1; and this, so far as it goes, is perfectly intelligible. But in the Lords' bill, § 42, mention is made of a judge under the name of a *division judge*. Now, then, who is this same division judge? — what is the court in which he is to sit? — where is the *bench* on which he is to sit? None does the Lords' bill, by whom he is created, mention: *air* — thin air — or a *vacuum* — a still thinner *substratum* — is the seat on which his sitting-part will have to rest. However, as he himself is but a fictitious entity,† not very severe (it is hoped) will be the suffering produced by the want of it.

When speaking of *courts*, — that of the two halves, — the subdivision courts, — the bill gives us no *integer*, no such *court* as a *division* court, having been instituted or mentioned by it, has been already noticed (see p. 569.) In this same 42d section, however, we have this same division *judge*.

Be he who he may, in his character of English judge, he will be a harpy, — and, being so a harpy, in addition to his wig and furred gown, he will have *wings*; with these wings he may keep fluttering over the court in which the chief judge and three "other judges" are sitting, waiting to receive, at the hands of his noble and learned creator, his existence: talking theology to the other *inclusas animas superumque ad lumen ituras*, of whom Virgil singeth. One day, let us hope, — one day, in his noble and learned creator's own good time, we shall know who he is: — he will appear to us in the flesh: — some individual composed of flesh and blood, with two feet, and (save and except harpy's feathers as above,) without feathers, we shall see, and hear, answering to the name of *Mr. Division Judge*. Shall he, for example, be Mr. Solicitor-General, by whom the said bill is admired so sincerely, defended so stoutly, and understood so perfectly?

In the *first* edition of the Commons' bill, his Division-judgeship *does not* make his appearance. But in the second edition of that bill, which in so many points is so different from the first, he *does*: and in this second edition, the number of *this* section is not, as in the Lords' bill, 42, but 48: so that, on maturer thoughts, this same division judge, in his above-mentioned state of imaginary, or say potential existence, the honourable and learned recommitters of the bill, — who, as above observed, understand manufacturing a bill of twenty-two folio pages, as the phrase is, *in no time* (Mr. Attorney-General, shall we say? and Mr. Solicitor-General — the chosen of the noble and learned creator?) — yes, in their maturer thoughts, this same division judge, though nothing upon earth do they give him to do, they are determined to have.

So much for the *division judge*, in § 42 of the Lords' bill, and in 48 of the Commons' bill, second edition, mentioned. Now for the commissioners, in those same places mentioned. The court of bankruptcy having been mentioned, what is the style and title given to him? *Answer: Commissioner thereof:* the court of bankruptcy being the last *antecedent*. Now, in what sense or senses, if commissioner thereof, is it possible he should be so? Two only, say I: namely, that of *member* thereof, and that of person *commissioned* thereby: which latter sense, by the bye, is but a strained one. Let any man produce to me a *third* sense that will bear examining, — *erit mihi magnus Apollo*.

Lastly, this same word *or*, by which, in its quality of *conjunction copulative*, the *division judge* and the *commissioner* are coupled together, in which of two senses is it to be understood? that which is called the *disjunctive*, or that which is called the *subdisjunctive*? If the *disjunctive*, then are there *two* sorts of these functionaries meant; if the *subdisjunctive*, then one only; these two names being each of them a name, by which that one person is denominated. In this latter case, instead of *or*, *I* should have written *or say*.

In a word, unless otherwise provided for, he would die of inanition; in which case, peace be to his manes! How then shall he be provided for? He must be metamorphosed into the sort of harpy called a sinecurist.

Now then, were it not for the solution given at the outset, — of everything, which, in the Commons' bill, first edition, is said of these same commissioners, what would be the result? *Answer:* That, severally and collectively, these same commissioners, six in number, *are* and *are not members* of the court of bankruptcy, in such its quality, and in its quality of a court of review: and

* 13th October 1831. Looking at the *second* edition of the Commons' bill, I find this same 38th section reprinted in it *in terminis*; and, in this second edition, the section is the 38th, as in the *first*. In the Honourable House votes of the 11th — 12th October, I read these words: "22. Bankruptcy court bill. Order for further considering report read; *bill re-committed*," &c. At the same time, at about 10 A.M. of the 12th, along with this same paper of votes, came in the above-mentioned second edition of this bill, ready printed: and this same second edition is, in a multitude of particulars, quite different from the first, over and above those of the sections which it has reprinted from the Lords' bill.

† *Ens rationis* — the technical logical denomination — he must not be called by: lest, by this appellation, intimation should be understood to be conveyed, of his being the offspring of *reason*, instead of his being, as he is, offspring of the want of it.

that they *have*, and have *not*, a *right* to *sit* in it.

Another curious operation to perform, and which, were there time for it, should on this present occasion be performed, is the determining in what cases the several commissioners, six in number, are authorized, each of them, to act singly, and in what other cases one is indeed authorized to act, but no otherwise than in conjunction with another fellow-commissioner, or two others, or others in some number greater than two. For the present, this operation must be dismissed: but, of this state of things, enough is said already to constitute a ground for the following practical conclusion, which, in the form of a question, will be deduced from it.

Comes accordingly the question, which, to the noble and learned author of this bill, presents itself for an answer. According to a position laid down in that speech of yours made from the bench, on declaring your resolution to swallow up your Vice-Chancellor and the Master of the Rolls, many-seatedness, and in particular triple-seatedness, is preferable to single-seatedness, in judicature: and accordingly, now, on the occasion of the instituting of a swarm of judicatories for taking cognizance of the bankruptcy business, for no other advantage than what you expect from the superior aptitude of many-seatedness in the case of the superior court, for no other advantage is it that you *quadruple* the expense: while, in the case of the court below it — in the case of the court of immediate jurisdiction in which all the business will be *begun*, and (so let us hope at least) by far the greatest part of it *ended*, you employ many-seatedness and single-seatedness promiscuously, as if, in regard to aptitude of judges, and consequent effect upon the rights and welfare of suitors, there was no difference.

If not promiscuously, but with distinction, — then, of the distinction which you make — giving the jurisdiction as you do, in some cases to the *one*, in other cases to the *two*, the *three*, the *four*, the *five* — what is the ground?

Now for a mass of entanglement — a very *plica Polonica*. Look to the court of review! look at its functions! What are they? Entangled in a most curious manner with those of every other in the cluster of five courts: — with those of the court of bankruptcy its superior, with those of its subordinate, the *division court* (supposing it to have existence) — with those of the two subdivision courts — with those of a commissioner acting singly — with those of the commissioners acting in courts composed of any number of them not exceeding the six — with those of the Lord Chancellor — and with those of the House of Lords. This same *plica Polonica* — what hand shall disentangle and unravel it? Answer this question who can: one sad answer may, and with but too well-grounded confidence, be made; namely, that by every touch of the comb, will be made to flow the blood of afflicted patients.

In the first edition of the Commons' bill, the sections in which this same court of review is mentioned, are § 2, 3, 7, 9, 10, 11, 17, 21, 30, 32, 34, 35, 36, 37. Before these pages are at an end, I may perhaps print, one after another, the several clauses, in which mention of this same court of review is made. Meantime let it be noticed, that of all these sections it is in the last — it is in the 37th of the first edition of the Commons' bill, that a finish is put to that unintelligibility, by which this bill may be seen so pre-eminently distinguished, from and above everything that ever went before it.

Secresy! — secresy in judicature! To this subject, and the anxiety betrayed by the noble and learned author of this bill, to envelope his own proceedings, and the proceedings of these his new judicatories, allusion has already been made, and explanation promised: for this explanation the time is now come.

Secresy! — secresy! — secresy in judicature, and to an *unlimited extent*, sought to be established by law, established in an act of parliament, now when reform of parliament is the order of the day! Am I awake? — can this be? Yes: here is the passage: and it is in this same § 7, and forms a tail to it, — not being of importance sufficient to form a section of itself: — "And the said subdivision courts may sit either in *public* or *private*, as they shall see fit, unless where it shall be otherwise provided by this act, or by the *rules* to be made as hereinafter mentioned."

If, as hereinafter proposed, the two subdivision courts were blown away, this abomination, this practice and power copied from the Holy Inquisition court, would therefore be blown away along with it: for, on no one of these same six commissioners acting singly, is this power of unbridled maleficence conferred.

But no! these are not the only hands in which this right of doing wrong is lodged. So early as in the second section, it is established, and lodged in the hands of the four judges of the court of bankruptcy, or any three of them acting under the title of a court of review; "which," says § 2, "shall *always* sit in public, *save* and *except* as may be otherwise directed by this act, or by the rules and *regulations* to be made in pursuance hereof." Now, as to any direction to a *different* effect, no such direction is there in the act; but, as to direction to this *same* effect, an instance has, as above mentioned, just presented itself to my astonished eyes.

Secresy thus endeavoured to be made to envelope in its baneful covering *this* part of the field of judicial procedure! and *this* part

that, in which, if not above *all*, at any rate above *most* others, the benefit of the light spread over it by *publicity* is greatest. "By publicity, (it has been said*) the temple of justice adds to its other functions that of a school: a school of the highest order, where the most important branches of morality are enforced by the most impressive means: a theatre, in which the sports of the imagination give place to the more interesting exhibitions of real life. Sent thither by the self-regarding motive of curiosity, men imbibe, without intending it, and without being aware of it, a disposition to be influenced, more or less, by the social and tutelary motive, the love of justice. Without effort on their own parts, without effort and without merit on the part of their respective governments, they learn the chief part of what little they are permitted to learn (for the obligation of physical impossibility is still more irresistible than that of legal prohibition) of the state of the laws on which their fate depends.

No other subject-matter (the observation has been made to me, and it is my expectation that I shall find reason for acceding to it) no other subject-matter of judicial procedure is there, from attendance at which, to numbers of men in so large a proportion, information and warnings so useful might be derived: frauds, for example, of which premeditated bankruptcy has been the instrument — imprudences, by which, step by step, in the road of prodigality, men have been led to insolvency. As to the sittings of commissioners under the existing practice, they are public and open in appearance; but for the purpose of any such information as *that*, closed in effect: such is the hubbub and confusion; — the same commissioners acting in two or three commissions alternately, in the same minute.

Of all other judicial proceedings of any importance, reports are published: published — not only in books, but in newspapers: of these proceedings, in which money, by hundreds of thousands, is disposed of, scarce ever is any account visible or accessible.

True it is, that under the existing practice, at the commencement of the proceedings, a *meeting* — that is to say, of the *commissioners*, — a meeting, to which the name of *private* is given, has place: and at this stage of the proceedings, *meetings*, in the *plural*, is the word sometimes employed. But, this stage *passed*, there ends everything *private*, whatsoever was meant by the word.

Now, of this same privacy, what is the need or use? To this question, in no one of the works on the subject of bankruptcy, have I been able to find an answer. Is it, lest, were the proceedings public, from the affirmation made of the debt, the reputation of a solvent trader should receive injury? — is it, lest an insolvent, and about to be, and properly, declared bankrupt, should withdraw his person, or more or less of his property, out of the reach of the power of the court? Into the propriety of any such alleged justification, the present occasion does not call upon me to inquire. Sufficient is it to observe, that, under the existing practice, at this stage of the proceedings, whatsoever be the meaning or end in view of it, the privacy is at an end: after it come the meetings, to which is given the denomination of *public* meetings: and the one only judicatory, in which, by law or practice, authorization is given to *privacy* of procedure, is that of the commissioners, of whom there are either three, four, or five, — never fewer than three, — whereas by this bill, authorization is given to the sittings, as well of the four or three bankruptcy court judges, as to those of the commissioners, when (as per § 6) "*formed*" into their two subdivision courts.

Well: but this same Lord Brougham and Vaux that now is — this Henry Brougham that so lately was — and who at that time was among the best-tempered and best-humoured of mankind — can you lay your hand upon your heart, and deliberately pronounce him determined upon the exercise of acts of secret tyranny and cruelty — the most maleficent of all the deeds of darkness? Oh no! no deliberate plan of tyranny; no hardness of heart; only a little giddiness of head, such as a sudden elevation is so apt to produce. "Father, forgive them! for they know not what they do." Who has not heard of this heavenly prayer? and who, that has any remembrance of what Henry Brougham so lately was, could be so hard-hearted as to wish to deprive him of the benefit of it?

Not but that it does appear, that at the bottom of all this secresy, in which he was thus putting it into his power to envelope the proceedings, there was some sinister design, and, in particular, some *fee-gathering* design, for assuaging his hunger and thirst after — what shall we say? — not *righteousness*, but the mammon of *unrighteousness*; either this or else, that while penning these two sections, in the second of which he returns to the charge and care of secresy, he was thinking either of nothing at all, or of something which was nothing to the purpose: for example — London Universities — uncommunicated, or useless, under the nature of useful knowledge, — or hydrostatics, — or some theorem or problem of pure mathematics, for the instruction of the Royal Society; or, lastly, that, not caring to be at the trouble of so wearisome a job, as that of penning a paulo-

* *Rationale of Evidence*, B. II. Ch. X. *Publicity and Privacy*, &c.

post future act of the legislature, on the composition of which millions of money, and the fate of tens of thousands of men, women, and children, would every year have to depend,—he shot down the load upon the back of this or that one of his dependents, who was seen to be in possession of a pair of shoulders, but by accident happened not to have a head upon them.

Ah ministers! ministers! deep may be your regret, when you come to learn what the people think of you, for having, at such a price as the forcing through of this job, purchased the support of this one "indiscriminate defender of right and wrong," by the indiscriminate utterance of truth and falsehood. Had he been left where you took him from, you would have had less amusement given you by personalities; but, by how much less would have been the majority against you in the House of Lords? Some of you — I know not how many of you — have (while writing this I hear) felt this same regret. I forgive you: may the people forgive you! Yes: but on no other condition, than that of your throwing Jonas overboard, or making him into a scapegoat, and sacrificing on the altar of justice, him by whom justice herself is endeavoured to be sacrificed — sacrificed to his own sinister interest.

The country kept thus long in a ferment — and for what? For no better a cause than the forcing through parliament this one job!

And you (says somebody to me)—and you, who are thus crying out against secresy — in your proposed codes, are there no instances in which you authorize it? Oh yes; instances there are to be sure: but in no instance is any such authorization given without special *reasons:* and few and narrow indeed are those instances; nor any one is there, in which the secresy has not its limits in respect of *time;* and *that* in such sort, that in no instance can the secresy be applied to any abusive purpose, but that the abuse will, sooner or later, be brought to light, and the authors subjected to condign punishment.

In every judicatory, of whatever, by any person concerned, is said or done in relation to the business, minutes will be taken, word for word, as in select committee of the House of Commons.

Now for the proposed AMENDMENTS. To give them *in terminis*, and with application made to the text, would occupy more time and space than the exigency admits of.

For conveying a general conception of them, the following short heads may serve:—

1. Strike out all the superfluous situations; namely, in the court of bankruptcy, those of the three puisne judges — and those of the secretary, with his two clerks.

2. Whatsoever be the number of the commissioners, let them all, on every occasion, act singly.

3. *Six* being the number regarded as sufficient for the whole of the business, taken at its maximum — appoint, in the first instance, some smaller number, suppose *three:* with power, to each, to appoint a *depute,** sitting (in the same manner as his *principal!*) by himself; and, during a probationary *year*, serving thus, as it were, as an *apprentice;* and, as such, serving without pay.

Reason 1st. No man who in his own opinion is not fit, will accept the office.

Between the several deputes, *emulation* will have place: each of them being a candidate for a commissionership; so many deputes, so many rival candidates.

The commissioner principal would see it to be his interest to depute whatsoever man appeared to him to be the fittest. Why? Because the greater the fitness of the depute, the greater his chance of being appointed commissioner.

2*d.* By appointing a depute, so fit as to be appointed commissioner, he would thus, and with honour, exercise patronage; if not so fit as another, he would have no patronage; if conspicuously unfit, instead of patronage, his lot would be — disgrace.

Behold here the *securities* afforded for *appropriate aptitude.* Confront with them those constituted, in § 1, by *years of standing;* and, in § 8, the nugatory formality of a vague generality oath.

4. For each commissioner, acting singly as above, whether principal or depute, let there be a *registrar.*

5. When a commissioner deputes a *commissioner depute*, as above, let him appoint a *registrar depute*, to act under that same commissioner depute; the registrar, in like manner, serving his probationary year *gratis.*

6. To take and keep an account of everything which is said or done in the course of the procedure, — such, in general conception, is the business of a registrar.

7. Let the appointments of the several *principals* be (as in the bill) by the *King*, but with special mention of its being at the *recommendation* of the Chancellor. The state of the case would not thus be different from what it is at present: but, by the declaration thus made of it, responsibility to public opinion would be fixed upon the Chancellor, much more strongly than at present.

8. No *fee* to be taken by any functionary, high or low, of either court, on any pretence: for every fee so received, punishment as for corruption or extortion, or both. A fee to a subordinate is still more mischievous than

* In the Scottish Judiciary Establishment' *sheriffs* (judges of the shires) appoint *sheriffs-depute.* [They are called sheriffs-substitute. — *Ed.*]

the same fee to his patron. The patron has it in his power, and the fee makes it his interest, to maximize the number of the *occasions* on which the fee shall be received; and this without being seen to do so: every fee allowed to be taken by any subordinate functionary, of whose situation the judge is patron, is a premium on the manufacture of expense by the judge: of expense, as also of delay; namely, for the purpose of magnifying the number of the *occasions* for fresh fees, and thence for increase to the expense. It is by the having given this shape to the remuneration, that the existing state of things, in respect to the judicial establishment and system of procedure, has been produced: a state of things, in and by which, to so vast a majority of the people, justice has been utterly denied; and, to all besides, sold at an extortious price.

9. Let *lot* determine the *order* in which the business, as it comes in, shall be carried before the commissioners; that is to say, which commissioners shall be the *first* to appoint a depute, which *second*, and so on. When each has thus appointed his depute, if ulterior bankrupteies remain to be taken cognizance of, let lot determine the option of appointing ulterior deputes, as before: and so *toties quoties*. On this plan, is there any danger of a superfluity? None whatever. By appointing any depute over and above the number likely to be found needful, no commissioner would have anything to gain: were he to do so, he would discredit himself, and disoblige the depute or deputes already appointed by him.

10. As to official assignees, let one such assignee be appointed with a salary, as in the case of a commissioner, with power to appoint *deputes* as need called for them, as above: or else, for every *commissioner* principal, as above, establish an official *assignee* principal. Of these two arrangements, the former is the most simple. Each such depute should be removable, at any time, *instanter*, by each one of his three superiors; namely, his principal, any commissioner under whom he had been officiating, and the bankruptcy court judge.

Without this arrangement, prodigious would be the difficulty of determining what is the number of these trustees necessary, and thence the aggregate amount of the *pay* necessary to be given to them: as also of obviating abuse, on the occasion of the intercourse, between these functionaries chosen by the government, and the assignees chosen by the individual parties.

As to the relation and intercourse between the official assignee and the non-official assignees, this is a subject naturally loaded with no small difficulty. If either *can act* without the other, the tying them in any way together cannot have any use: if neither can act without the other, no limit can be assigned to the DELAY with which the *getting* in of the assets, and the distribution of them, may be clogged. But, by the probationary system above proposed, this difficulty will at least be much lessened, if not entirely excluded; the natural causes of delay will be brought to view, and, by the view taken of them, the natural and appropriate remedies will be suggested.

Under the system established by the bill, — of the official assignees (of whom, from the second edition of the bill, it appears there are to be thirty, with emoluments, in relation to which not a syllable in that same second edition have I been able to find out the business,) the emoluments, in so far as constituted by fees, would, of course, receive every possible extension, as occasions happened to present themselves.

Under the here-proposed system, not only to the several situations of commissioner and official assignee, but to that of Lord Chancellor also, would this check upon abuse apply itself. More conspicuously than it would be otherwise, would his reputation be at stake upon the aptitude of the choice made by him of commissioners and official assignees. By the choice made by him of commissioners, and by every choice made of an unapt deputy, a commissioner would show that in choosing him, the Lord Chancellor had made a bad choice; and so in the case of an official assignee.

Proportionable to the efficiency of the security against abuse afforded by this arrangement, would of course be the aversion to it on the part of his Lordship; for, it would narrow the arbitrariness of his Lordship's choice, and operate as a check upon the appointment of unfit and worthless dependents, flatterers, parasites, and other favourites.

A proposition, having for its end in view the *optimizing* the judicial establishment with its procedure, and maximizing the happiness of the people under it — a proposition which has for its end in view, the abolition of the sacrifice of the interest of all besides to the sinister interest of lawyers, along with that of the ruling few, — at the sound of a proposition so horrible, I behold learned and honourable gentlemen (how little less than *all* that the Honourable House contains!) all thrown into convulsions.

11. 9. Appeal, from every commissioner to the bankruptcy court judge. Jurisdiction to him, — *immediate*, none: none but this *appellate*.

12. Power to the *judge*, from time to time, to establish *rules and orders*; intimation given — that, wherever, on the face of it, the need of the rule is not plainly obvious, — *reasons*, annexed to it, are expected at his hands. No

blockhead so stupid as not to be able to pen rules, for which no reason need be given: — while, by the thus imposed *obligation* of giving reasons, — by this obligation, though not of the sort which by jurists is called a *perfect* one, is established a test of aptitude, for the legislative function thus exercised; a test, the tendency of which is — to drive from the task all who are conscious of want of aptitude for it.

13. Power to *Lord Chancellor*, at any time to *repeal*, or say *disallow* (no matter which be the word,) any or all of the rules and orders so established. Power to him, at the same time, in relation to the subject-matter of them, to substitute new ones: on his part likewise, intimation that, in both cases, reasons are expected. Under the existing practice, be the rules and orders of a judicatory ever so mischievous, the mischief is without remedy: without remedy applicable by any hands other than those of parliament.

By this means, responsibility is fixed entire: — in the first instance, upon the bankruptcy court judge; then, after him, upon the Lord Chancellor: whereas, were they to concur in the establishment of the several rules and orders, the responsibility would be divided, and, by the division, greatly weakened, not to say destroyed.

14. All these rules and orders, as well those of the Lord Chancellor, as above, as those of the bankruptcy court judge, let them be certified to the two Houses; and by the House of Commons printed, of course, with the other papers, for the use of the members; with additional copies of the same impression to be exposed to sale.

The cheapest way would be to print, at once, under the care of the functionary by whom these same rules and orders were made, the whole number of copies necessary for the use of the members of both Houses, and for sale; one copy, authenticated by the maker's signature, being transmitted to each House; notice thereof being at the same time published *gratis* in the several newspapers.

15. As to salaries, let not any one of them commence till the business of the court in which they are to be earned has commenced; commenced, in each instance, by the actual appearance of a suitor in that same court. — Under the bill as it stands, "this act," it is said, "shall take effect from and after the passing thereof, as to the appointment of the judges and other officers hereby authorized; and as to all other matters and things, from and after the eleventh day of January next."

Gloria Patri! Glory to the noble and learned father of this bill! To secure the payment of the salaries, nothing is there that is necessary to be done for them! Under this act, let any man, whose patience has carried him through the foregoing observations, and in particular, those under the head of *uncertainty*, judge — whether the business, by which the salaries are required to be earned, would be able to stir a step, stuck so fast as it will have been seen to be, in the mire of nonsense.

16. At any rate, let the *duration* of the act be but temporary: — say three years. In the practice of parliament, a provision to this effect is, as everybody knows, in frequent use. Not many, surely, can have been the *occasions*, on which any stronger demand for it than on the present occasion, has had place.

This same principle of *probationership* — the applications made of it being, moreover, followed by choice made out of the probationers, — let it be considered how vast the extent is to which it is capable of being applied to the filling of official situations: and, in the character of a security for the maximum of appropriate aptitude, and still more, in the character of a security against the maximum of correspondent inaptitude, — let it be considered whether the beneficence of it be not correspondent to that same extent.

Proportioned to its efficiency in that character will of course be the horror inspired by it into the minds of all expected *protégés*, to whom their respective consciences present a certificate of inaptitude: *item*, into the minds of all expected *patrons*, to whom their respective consciences present a certificate of intended abuse of patronage.

In conclusion of this not as yet completed list of proposed amendments, comes now one word on the subject of four-seatedness.

Suppose the necessity of it, to the exclusion of *single-seatedness*, established as a principle, — behold the consequence. In case of single-seatedness, for a system of local judicatories embracing the whole kingdom, money enough (suppose it agreed) can be found; in case of four-seatedness, not: on this supposition, what is the consequence? That, by this artifice, accessible justice is impossibilized; factitious expense and delay, eternized. Still, as now, and so for everlasting, justice denied and sold — sold to the best bidder; for such is always the *rule* and the *result:* the largest purse is sure to carry it."

This is the design of which I stand forth and hereby accuse the noble and learned head of the law. This is the problem, of which I accuse the noble mathematician of having proposed to himself, and, at the end of it, written Q. E. F.

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* Of the existence of this state of things, a demonstration may be seen in the work intituled "*Petitions for Justice*," &c. That the abomination has swelled to this enormous pitch, and that such, as above, was the origin of it, is what, of the vast multitude of men of prime talents, whose interest it is to controvert it, not so much as one has ever yet felt himself able so to do in print, with any prospect of success.

As yet, so general, not to say universal, is the preference given to what is old and bad, how bad soever, to what is new and good, how good soever,—so generally current, even among well-informed men, the aphorism "*too good to be practicable*," — that, the more firmly I am assured that the above proposed arrangements would, if adopted, be productive of the effects intended, and that, taking them in the mass, nothing rational can be adduced in opposition to them, — the more thoroughly am I assured, that in the existing House of Commons, reform-preaching as it is, all adoption of it is hopeless. Nor will it be less so, so long as the head of the law stands upon the shoulders upon which it stands at present.

Oh! grudge him not his pension of retreat! Oh no! anticipate it — make him a *pont d'or*, too long and too wide it cannot be — so he does but consent to pass over it.

And who then shall be his successor? Happily, of his name all mention is as needless, as to him it would be unpleasant; to him who, in nothing which on this subject has by this pen been written, has had any, the least participation, nor, perhaps, at this moment knows of the existence, or so much as of the design, of it.

Taught by Tacitus, this splendour I throw around him. Speaking of statues, "*Præfulgebant*," says the Roman historian, if I do not misrecollect him—"*præfulgebant Brutus et Cassius, eo quod non visebantur.*"

Now as to *fees*. As to fees, the Lords' bill said nothing: the Commons' bill, in the first edition of it, as little: in the second edition, comes the list of fees. Why not till the *second* edition? *Answer:* Because, at the time of its being delivered in, the determination having been taken to hurry the bill through both Houses, with a precipitation in such a case altogether without example, it was seen that all examination of it would thus be rendered the more assuredly impossible.

Obscurity here, as exquisite as ever: Of these lawyers' sweetmeats — to suitors, pills so bitter — the list is divided into two schedules. *Items*, in schedule I. 10; in schedule II. 12. *Sources* from whence the precious matter is drawn — that is to say, *operations* and *written instruments*, — in eight of the twelve items of the second schedule, upon the face of them, the same as in the first. In three of those eight instances, for one and the same *operation*, the fee in the second schedule is, as above, different from what it is in the first. Of course (*reason* never having as yet been able to find its way into an act of parliament) — for no one of all these differences is any *reason* assigned: and as to the *cause*, for this also we are left to conjecture. As to the question, in which of the *five* courts instituted by the bill instead of *two*, the fees are to be paid, in schedule I. nothing is said: in schedule II. namely in item 3, mention *is* made of the court: it is "the court of *review:*" so likewise in item 6: in that instance, it is "a *subdivision* court." Schedule I. bears for its title these words — "*The first schedule of fees before referred to:*" — referred to? where? this is not said. The title of schedule II. is — "*The second schedule of fees before referred to:*" — where referred to, is not said. Of *this* obscurity, the cause (it is true) lies in parliamentary practice — in the shapeless shape given to bills — the shape in which *sin* appeared to Milton: division none; object of reference, accordingly, none: to the noble or honourable and learned draughtsman, or draughtsmen, all that can be justly imputed is — the advantage taken of the obscurity, and the confusion produced by it.

In this stygian darkness, one thing alone is clear: and *that* is the determination to maximize the weight of the burthen heaped upon the afflicted.

Now for proof. Of fees, in the instance of which it is the *interest* of those to whom the *power* is by this bill given, to give increase to the *number* of the *occasions* on which they are received, or to the *quantity* of the *matter* in proportion to which the amount of the fee receives increase, behold the seven examples following:—

1. In schedule I. item 4 — For every *order* on hearing, ... £1 5 0

2. In schedule II. item 4 — For every *order* pronounced by that court (namely, the court of review, as per the last preceding item,) £1 5 0

A word here, as to the instrument here denominated *order*. In these two cases, is it the same thing, or a different thing? No bad subject-matter for litiscontestation this; — that is to say, should the fee-gatherer of any one of the five courts other than the *court of review*, claim a fee to this amount, for an *order* thereof, which is *not* an order *for hearing*.

3. In schedule I. item 5 — For every previous minute of order, . . . £0 3 6

In schedule II. item 5, . . . 0 2 6

Note — that, for every order, there will of course be a previous minute thereof.

4. In schedule II. item 6 — "For entering every matter for hearing in a subdivision Court," £0 1 0

5. In schedule II. item 7 — For every order pronounced there, ... £0 5 0

Note now the fees, of which, (they being payable on the occasion of a *written instrument* exhibited,) the amount will increase with the *number* of the *words* in *each* such instrument, as well as with the number of the *instruments*, which can be contrived to be eli-

cited: contrived, as above, by *rules and orders* of the Lord Chancellor and his confederates, the three *puisnes*, or by the *practice* of the judge or *judges* of the several courts, in or by which these instruments are respectively exhibited.

6. In schedule I. item 10 — in schedule II. item 11 :— in both schedules, the description of the source of the fees is the same — namely, for copies of affidavits, *orders*, and other proceedings, per folio of ninety words, ... £0 0 1½

In these three halfpence, behold the premium which so many learned persons, of whom one is noble, and divers and sundry others honourable, are giving themselves, for every ninety words they can contrive to get put into these several written instruments. Taken by itself, this sum, three halfpence, is no great matter: but, many littles (says the proverb) make a mickle; and four of these *littles* constitute more than many a debtor or creditor has for a day's sustenance: and, when taken from him, will deprive him of it.

7. In schedule II. item 8 — For fees on the trial of every issue, to be paid by the successful party, ... £2 0 0

Here presents itself a puzzle: — This anxiety to place the load on the shoulders of the successful party, whence comes it? this party, according to every natural presumption, will be the party *in the right:* and, in the mind of every man, this presumption will be the stronger, the higher his opinion is of the aptitude of the judicatory by which this same thing called *an issue* is to be tried; the judicatory — that is to say, in this case, a *jury:* and, in the opinion of the noble and learned author of this bill, how much lower than the seventh heaven is the place occupied by a *jury*, of what sort of men soever composed, so there be twelve of them, and the twelve put all of them into a box? This penalty, why thus imposed upon a man for having been, by a jury, pronounced to be in the right?

Then as to *pockets:* — the pocket, or pockets, into which this same £2 is to find its way; to find its way — in the first place *immediately*, — in the next place, ultimately: where are these same pockets — whose are they to be? Be this as it may, the *court* is in this case the court of *review*, and the judge, before whom the issue is to be tried, is "one of the judges thereof:" so says § 4 of this second edition of the Commons' bill.

Now, then, to what purpose other than the *fee-gathering* purpose, is organized the complication produced by the mention thus made of the word *issue?* Can any bounds be assigned to the amount of the property, in relation to which, in the ordinary course of things, in every day's practice, questions of *fact* have been decided upon by the existing commissioners, and will have to be decided upon by the *new* commissioners, and without this predatory formality of sending the question to be tried by *an issue?* If in those instances the mode employed in determining this same question of fact is a proper and sufficient one, — how can it be otherwise than sufficient, in any of those instances in which these learned judges are authorized to load the suitors with the burthen, and their own pockets with the benefit, of this tax? Then again — in the case in question, is the established *fiction* to be employed? — the fiction of a feigned action in a court of common law, with the fees, the expense, and the delay attached to it? For the shutting the door against this money-snatching lie, so regularly told by judges and their accomplices, I see no promise in this bill: nor, to my recollection, has the door been shut against it by any act of parliament. Were the practice a common one, the abomination constituted by the chancery and so-called *equity* proceedings, could not, even by the so-much-too-patient people, have been thus long suffered.

But, of the twelve *good men and true*, with the burthen imposed on *them* as well as on the suitors — where, in *this* case (not to speak of other cases,) is the *need*, not to speak of *use?* True it is, above all price is the institution of a jury: and *that* on two distinct and widely different accounts. One is — the *publicity* it has been the means of securing to all proceedings in which it has place; the other is — the *veto*, with which, at the price of submitting to torture and committing perjury, it enables the people, to so great an extent, to paralyze tyrannical and liberticide laws and judicial practice. But, on which of these two properties will the noble and learned author of the bill lay his finger, as being, on the present occasion (not to speak of former occasions,) the property by which the institution has been recommended to his favour? and *that* with such effect, as to have produced this his determination to force it into this branch of business, to which it has hitherto been almost, if not quite, a stranger? Thus to force it in, and thereby to put this additional instrument of evil into the hands of every *malâ fide* suitor — every dishonest suitor, who, knowing himself to be in the wrong, trusts to the relative and comparative indigence of an opponent, for his success? Assuredly to neither of the positions, by which these two properties are pronounced *beneficial*, will he subscribe: which being the case, should he venture to attempt a justification of this arrangement, he will find himself reduced to his old aphorism — namely, that, provided they be in number twelve, and all twelve put into a box in a chamber called a *court of justice* (not a box in the *Opera-house*) — men, no one of whom had ever been in a court of judicature in his life, will understand the business of judicature better than

a man who has passed half his life in the practice of it.*

Here follows an extract from the self-published speech of Henry Brougham, Esq., spoken in Honourable House, February the 7th, 1828, on moving the *Local Judicatory Bill:* —

Page 16. — "There are two observations, sir, which I have to make, relative to the judges generally, and which I may as well state now I am upon that subject. I highly approve of paying those learned persons by salaries, and *not* by fees, as a general principle; but so long as it is the practice not to promote the judges, which I deem essential to the independence of the bench, and so long as the door is thus closed to all ambition, so long must we find a tendency in them, as in all men arrived at their resting-place, to become less strenuous in their exertions than they would be if some little *stimulus*† were applied to them. They have an irksome and an arduous duty to perform; and if no motive be held out to them, the natural consequence must be, as long as men are men, that they will have a disposition, growing with their years, to do as little as possible.

"I, therefore, would hold out an inducement to them to labour vigorously, by allowing them a certain moderate amount of fees. I say a very moderate amount, a very small addition to their fixed salary, would operate as an *incentive;* and if this were thought expedient, it ought to be so ordered that such fees should not be in proportion to the *length of a suit*, or the *number of its stages*, but that the amount should be fixed and defined once for all, in each piece of business *finally* disposed of.‡

"I am quite aware that this mode of payment is not likely to meet with general support, especially with the support of the reformers of the law; but I give the suggestion as the result of *long reflection*,‖ which

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* For all these judicatories, where are to be the several and respective *justice-chambers*? On this occasion, let us hope that a *court-building* job is not intended to be added to the *church-building* job. I say *justice-chamber* — to keep clear of the *ambiguity* involved in the word *court*, as well as in the word *church:* an ambiguity, by which so many worthless and maleficent real entities are respectively erected into, and confounded with, one venerated fictitious entity.

As to the institution of a *jury*, so far am I from being an enemy to it, that, to everything in it which is beneficial, I give an extent, in a vast proportion beyond what it has at present; namely, by means of an improved *substitute*, to which I give the name of *quasi-jury*.

† *Stimulus* indeed! Profit, which is the same, neither more nor less, exertion or no exertion, and, if exertion, how strenuous or how little strenuous soever it may be, — in this state of things, what is the exertion which the stimulus is capable of affording? — a profit, moreover, which, more or less of it, if not all of it, is received and pocketed — not by the man in question — the judge — but by his locatee — the man appointed by him to a different office, though indeed an office of which he has the patronage? *Stimulus* indeed! Of those same subordinates of his, be they who they may — even of these men, how is it, that to any exertions of theirs, by these same fees, any stimulus can possibly be applied? for, in their instance as well as in his — exertion or no exertion — exactly the same is the profit, neither more nor less.

This same exertion — how is it to come? what is there to call it forth? One man puts his name to a *paper*, and for so doing receives a *fee:* for the motion thus given to his hand, what are the exertions necessary — what the degrees of *stimulatedness* they are susceptible of?

Another man takes the *copy* of a paper, and for this same copy takes a fee: what are the exertions here?

Tell us, good Mr. Brougham, I said whilom; — tell us, good Lord Brougham, I say now. — What! mute? O yes: to all these questions, mute you ever have been, mute you are, and mute you ever will be.

Certain occasions there are (suppose) on which the exertions might, by this supposed stimulus, be producible: to these occasions is the application of it confined? Not it indeed: it is altogether indiscriminate.

Stimulus indeed! Exertion made strenuous! O yes: certain occasions there are, on which — certain *purposes* there are, for which — the property of a fee to act as a stimulus — to produce exertions, and those strenuous — and made to act, and with effect, with but too much effect, — shall not be disputed: purpose, the producing occasions for the demand and gathering in of fees; occasion, every occasion on which a cause, or a pretence, for such demand can be manufactured.

Yes: to *this* stimulative power of fees — to the stimulative power of fees when *thus* applied, — to this it is that the whole technical system of procedure — every part of it — that productive system of which his Lordship has done so much towards augmenting the efficiency: — to this it is that the people are indebted for that system of factitious expense and delay, by which *justice*, or what goes by the name of it, is *denied* to the vast majority of them, and at so exorbitant a price *sold* to all besides.

Stimulus indeed! O yes: as to the work of generation, so far as expense, delay, and vexation, are the fruit of it, approdisiacs — cantharides — of altogether incontestible, irresistible virtue, are these same *fees*.

‡ A "*piece of business*," what? Of this same piece of business, what "disposition" is it that will be universally understood to be a "*final*" one?

‖ *Long reflection.*] Long reflection indeed! This was anno 1829, when he was plain *Henry Brougham* — plain barrister-at-law — how famed soever in the same. Two years have elapsed: he is now Lord High Chancellor — he is now omnipotent — he is now invested with the power, the magnitude of which cannot be more appositely or impressively displayed or testified, than by the circumstance of its giving existence to a measure such as this. In this it is that we have

has produced a leaning in my mind toward some such plan. I throw out the matter for inquiry, as the fruit of *actual observation*,* and not from any fancy that I have in my own head.

"But I may also mention, that some friends of the highest rank and largest experience in the profession agree with me† in this point,

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the only shadow of a use, which his imagination — powerful and fruitful as it is — is able to frame for putting it to in idea. And now, what does he? He has taken in hand the instrument — he has studied it — he has pronounced it a good one, and fit for use: yes — fit for this use: and after all, the only use which he can find hardihood enough to speak of with approbation — this use he does not put it to: all the uses, on which, on this occasion, he has passed condemnation — condemnation which, though but implied, is not the less manifest — and on other occasions (as will be seen) such vehement condemnation — all these uses he now not only approves, but, in numbers of instances altogether countless, will be seen putting them to.

Oh no! not fees alone, but salary eke also: — salary, so it be added, not substituted to them, he has no objection to.

* *Actual observation.*] Actual observation? Quere, of what?—of the moon? or of the satellites of Jupiter? or of any of those *conjunctions* by which days are pronounced lucky or unlucky, and fortunes told?

† *Agree with me.*] Agree with him? O yes: to this assurance, credence, may be given without much danger of error. Suppose an enactment made, aiming, in appearance, at this object, — no want, assuredly enough, would there be of fees: fees generated by *doubts* and consequent suits; fees of the genuine description, generated by doubts as to the source out of which this new-invented spurious fee, or rather so-called *fee*, was to be understood to flow.

Of this same stimulant, what shall be the dose? Shall it be the same in every *sort* of bankruptcy case?—shall it be the same in every *individual* bankruptcy case? In Equity, an instance may be seen of a suit, in which the value of the property in question did not exceed some such matter as £10: others, in which it has not been less than some such matter as a million of pounds. I speak thus loosely, because, on an occasion such as this, trifling errors are not worth guarding against: nor, in bankruptcy matters, is the case much different. In all these cases, is this fee (call it the *clenching* fee, or the *quietus* fee) to be the same or different? If different, — the magnitude of it bearing a certain proportion to the value of the subject-matter of the suit (this same value—quere, how to be ascertained?) what shall be that proportion? Here, then, would be to be made a *scale* of fees: here would be to be made matter for a *schedule*. Thus, then, would learned gentlemen have matter for *doubts* — matter for "*great doubts:*" matter for swarms of suits, each of them pregnant with swarms of doubts: suits, out of any one of which, with the assistance of a Lord Eldon, a *malâ fide* suitor, having for his object the ruin of a man marked out by him for his victim — destruction of his property, with or without the acquisition of it — might be able to drag it on to five, ten, or fifteen years' length, at the

— men who are among the soundest and most zealous supporters of reform in the courts of law."

22d Feb. 1831, *Mirror of Parliament*, p. 409. — "The fourth principle,‡ and the last

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expense, more or less, of as many thousand pounds. No: the question as to the disposition of those same men, who, being "in the profession," are among those "of the highest rank and largest experience" in the same, — the question as to their agreement on this subject, with his then Barristership, now Lordship, is a question out of which no such, nor any other *doubts*, can be generated: nor, in regard to these same learned gentlemen, need it be stated as matter of great doubt, whether they are among the "most zealous supporters of reform in the courts of law."

‡ *The fourth principle.*] (1.) "Judges should be *remunerated* for their labour.... (2.) Judges ought to be *well* remunerated..... (3.) Judges labour.... ought to be *amply* but not *extravagantly* paid for."

"1. The patient should be *physicked* for his disease.... 2. The patient ought to be *well* physicked.... 3. The disease ought to be *amply* but not *extravagantly* physicked for." What should we say of a medical practitioner whose prescription should run thus?

A genus of discourse there is, which goes by the name of *twaddle:* may not this be stated as being a species of it?"

Yes: if you are a man of craft, exquisite is the subserviency of this apparently silly matter to your purposes — to any of them that will not bear the light. Talking all along in vague generalities, composed of words of indeterminate signification — no line drawn anywhere between the quantity that is and the quantity that is not eligible: — talking thus, let but your language run smoothly, everybody, as he thinks, understands you — understands you in his own sense — in the sense most pleasing to himself — in the sense which accordingly renders him most pleased with you: talk thus — and, so far as depends on *him*, your point is gained.

Yes — everybody: not merely those who, having a sinister interest to serve, are determined to be satisfied with whatever it is that you say — not only these, but even the few, who, if they knew how, and if it did not require too great a sacrifice, nor give them too much trouble, would rather do, and be thought to do right than wrong: and who are in the House, either to oblige a friend or for a lounge, instead of Brookes's, Almack's, the Athenæum, the Opera, or a private party. Advice, descriptive of this policy, with recommendation to employ it — advice to this effect, would make a most appropriate match with *Hamilton's Parliamentary Logic;* and, if not already there, should in the next edition be inserted in it.

So much as to persons at large. Now as to his noble and learned Lordship.

Well then — this same *twaddle*, when he was thus talking it, was it with him as with *Monsieur Jourdan*, who had been talking prose all his life without knowing it? O no: perfectly well what he was about knew he. *Exoteric* and *esoteric*— what was that school? was it not Pythagoras's, in which men are all along taught how, in and by the same set of words, to deliver two different

with which I shall trouble your Lordships at present, is to provide, where it is possible, (and I know not why it should not always be possible,) that judges *should be remunerated*

and even opposite doctrines — one of them designated by the one, the other by the other, of these two words — exoteric for the deception and satisfaction of the people without doors (for that is the meaning of the word) — *profanum vulgus* (as Horace calls them) — the esoteric for the use, purpose, and information of people within doors — the choice few — the noble lords, honourable gentlemen, and select vestrymen, of those days? Of the doctrine thus preached by their noble and learned professor, the obvious sense was the *twaddlic* — the exoteric — sense; but besides this, had it not an *esoteric* sense? O yes: that it had.

A man who, for a particular purpose, puts on a character different from, upon occasion even directly opposite to, his own, is no novelty in this wicked world of ours. For the purpose of slaying tyrant Tarquin, did not one of the Brutuses wrap himself up in the garb of insanity? For a similar purpose, did not Hamlet wrap himself up in the like garb?

In former days, monarchs, for their amusement — were they not wont to have *wits*, under the garb and name of *fools*? Look then at our noble and learned twaddlist — look at him a little closely — look at him in his robes — and ask yourself, whether on this occasion you do not see him covering them with the garb of a simpleton? And why in a character so opposite to his own? Oh! only for the purpose of putting a little bit of deceit upon us simple folks — upon us the people without doors! And why thus deceive us? Oh! no harm to us! all for our own good! The purpose (it may be seen) divides itself into two parts: Part 1. engaging Houses Right Honourable and Honourable to concur in the giving, in addition to salary, the dear delightful *fees*: here we have the esoteric doctrine — the doctrine for the reception of which they were and are, by habit as well as disposition, so well prepared; Part 2. engaging us whose place is *without doors* to bestow our acquiescence in this same so agreeable an arrangement.

O yes: when you see the noble and learned preacher, with the robes of Judge Bridoison over his own, delivering this same twaddle doctrine; call it, if you please, by that name: but, when you have done so, mark well the ingenuity with which, in the prosecution of this same purpose, it is employed — employed in raising clouds — clouds of dust, for the purpose of blinding such eyes as the purpose required to be blinded — those of the people, who are standing and staring *without doors*, and those of such of the noble lords, if any such there be, who are not in the secret, and who, were their eyes open, might be shy of giving their concurrence.

Behold him accordingly taking in hand the above-mentioned three *nothings*, and holding them up to view in the guise of so many *somethings*: behold him taking them in hand, and making them into a *wedge* — a wedge for insinuating the job, and, when once in, driving it on into adoption.

So admirably well adapted to its purpose is this same *wedge*, that it unites with it the properties of an *arrow* — an arrow with *barbs* to it — an arrow too firmly fixed to be ever drawn out; especially out of bosoms — noble and honourable bosoms — so little disposed to part with it.

"Judges should be *remunerated* for their labour:" here we have the wedge in the place into which it has been introduced — simple insertion into the prepared fissure. "They ought to be *well* remunerated:" here we see it in the place made for it by the first stroke given to it. "Their labours ought to be *amply* but not *extravagantly* paid for:" here we see it in the place made for it by the second stroke, which some may think is rather a bold one.

Look once more at this same "principle," with the propositions it consists of: do but see what nice, sweet, innocent, unobjectionable things they are: "Judges should be remunerated for their labours:" well then — where is the labourer that ought not to be remunerated for his labour?

So much for the *first* of these his three commandments: look now at the *second*; and the second, may we not see, "is like unto it."— "Judges ought to be *well* remunerated." See here too: be he ever so perverse — be he perversity itself, exists there that man that can be perverse enough, so much as to wish to say, or if he be, with all his ingenuity ingenious enough to find anything to say, against this? Put it to him to find if he can a thing which, if done at all, ought *not* to be *well* done.

So much for the second of these same propositions. Now for the third and last: — "Judges ought to be *amply* but not *extravagantly* remunerated." So here again: be the men who they may, especially men whose labour is so "high and intellectual," so as it be not *extravagantly*, can there be any harm in its being *amply* remunerated?

So much for *quantity*: now as to *shape*: for receiving justification, and thus completing the operation, nothing now remains but *shape*.

Not less triumphant will this justification be seen to be than that *other*— "Judges," we have seen already, "ought to be *well* remunerated:" but if they *are well* remunerated, how can their remuneration be otherwise than *good*? and *good* how can it be, unless it be so for all purposes it is required for? Well then: in the present case, of these same purposes there are two; for one of them, *salary* is required; for the other, *fees*. Now, then, these same judges, learned as they are, pure and disinterested as they are, — still are they, after all, — still are they, alas! but men: accordingly, not an inch will they budge, without the *stimulus* — without some little gentle touch of it. Well then, as to the expense of this same necessary tickle-toby: is it for the public to be made to bear the whole burthen of it? the individuals bearing no part of it — the individuals by whom is reaped the whole of the benefit of the "*high services*?" The interest of the whole public, is it to be made a complete sacrifice of, to the interest of a handful of individuals? Forbid it, justice!

Let it not pass unobserved, that that which under the name of a "*principle*"—one principle, namely, "the fourth principle"— the last in the train of principles we have been seeing, is (as the reader may have observed) a sort of a principle with three *heads* to it: a sort of a *Cerberus*, employed to guard from spoliation the so-ingeniously-discovered and about-to-be-so-well-worked mine, with its treasures, composed of salary *and* fees.

Be that as it may, by hook or by crook, every-

for their labours. It relates to the remuneration of the judges and their subordinate officers, and they ought to be *well* remunerated; for if you would have men fit for the station

thing is now settled. Now have we, in the words of an old toast, an old Oxford toast, "all we wish, and all we want, and all our wanton wishes:" here have we completed this same delicious compound, composed of *salary with fees*. Now may we write Q. E. F.; for now is the problem solved. Solved! and by what but by the twaddle?

Before we have done with it, view it in a still more enlarged point of view, and mark well how admirably well suited to this its purpose is this same *twaddle*. Admire the stretching-leather it is composed of: extendible or contractible, as the occasion, whatever it be, may require.

Constructed upon the most approved models you will see this implement to be. Have you an *abuse* to establish or defend? You cast your eye on it, of course, to see whether this same implement is applicable to it. To be applicable, it must present to view a scale divisible into two parts which have no determinate bounds: for example in *physics*, the scale commencing at the most splendid light, and terminating in utter darkness. In morals and politics, you have a correspondent scale, commencing with perfect *liberty*, and terminating at consummate *licentiousness*. Look at the example: you will see in it the very sort of thing you want. You take it in hand, and proceed thus: *liberty* (you say) is a good thing, and ought always to be allowed; no man can be more sensible of this than I am: but *licentiousness* is a bad thing, and ought always to be punished. Is there anywhere a *liberty* taken that you don't like to see taken? You lay hold of it accordingly, stamp upon it the word *licentiousness*, and punish for it. In thus doing, who is there that can prove you have been doing wrong?—who is there that can prove that what you have thus been punishing for is not *licentiousness*—is nothing but *liberty*? To make this proof, he must show the bounds by which the *licentiousness* and the *liberty* are divided: he must exhibit that which has no existence.

Viewed upon this more enlarged scale, *liberty*, it will be seen, should be *amply* but not *extravagantly* allowed; licentiousness, *amply* but not *extravagantly* punished.

Thus will it be with judges, so long as they are taken from the order of advocates—"the indiscriminate defenders of right and wrong." On the outside, you see the robe of the judge: but underneath it, and for a lining, remains still the silk gown of the advocate. Look at it through the glass here presented to you: the judge's robe will be gauze; the gown scarlet satin underneath it.

Little boys in their cricket have every now and then a functionary, whose style and title is *Jack-on-both-sides;* not on both sides at once, that being impossible; but on both sides successively and alternately. So it is with a barrister: on one and the same point, if not in one and the same suit, he will be for plaintiff at one time, for defendant at another: whichever he is for, that one will be everything that is good; the adversary, everything that is bad.

When understandings are to be confounded and made dizzy, a party man, writer or speaker, may be on one side and the other, not only on the same occasion, but, as we have been seeing, at the same time, talking backwards and forwards in the same breath: not less easily may he be of the one party and the other at *different* times. As to chancellors, true it is, that they have not often, if ever, been seen thus *vibrating*, or even *migrating*. But whence is this? Is it that they would not accept? No: but that they were never chosen. But for this, to-day his Lordship would be for Earl Grey; because he loves *liberty:* tomorrow for the Duke of Wellington; because he hates *licentiousness*. Would not this be the case? Reader, look at what goes before this—look at what follows after it—and then judge.

Meaning to hold up to view an accommodating standard, Lord Bacon typifies it somewhere by the name of the *regula Lesbia:* when lying on the shelf, it is strait, as rules should be; taken in hand and employed, the right line, if wanted so to do, bends and is transformed into any sort of curve. Put together, "*liberty* and *licentiousness*" make a *regula Lesbia:* so likewise "*amply*, not *extravagantly*." As to how this sort of implement came to be made at Lesbos, let any one who feels so disposed, go and inquire: I have not time.

Think not that your attention—think not that all the attention you can bestow upon this subject—can be ill-bestowed: for this, even this, is the language in which all the depredation that has brought on the *reform* measure has its support. "Aptitude," says this doctrine, "is *as* opulence:" be the situation what it will, a man's aptitude for it will be exactly as the quantity of money you cram his pocket with: do but as his learned lordship bids you—make but his remuneration *ample* enough—and, as it is written, "all other things needful shall be added unto you." Yes: when the new parliament meets, then by its order (as by a former parliament in a case within my memory was done by a *book*,[a]) should this same maxim—*aptitude is as opulence*—be burnt by the hands of the common hangman; which, by the bye, is the only employment I would give him. One of these days, may perhaps be seen in Honourable House, written up in letters of gold—*aptitude is inversely as opulence:*—one of these days, when the inventor and demonstrator of it is no longer in existence to behold it.[b]

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[a] *Droit le Roy:* Author, a man whose name began with a B (wasn't it Broderick?) an attorney, member of Lincoln's Inn: in Ireland, he was hanged for murder. Object of *Droit le Roy*—and that object very decently accomplished—showing that all the doctrines, which the most determined ultra Tories could preach and wish to act upon, had for their support, and were fully borne out, by those delivered from time to time by learned judges, from the time whereof memory runneth not to the contrary, down to the time then present or not far distant. Whether bespoken or no, the dose was deemed too strong to go down, even in the estimate of George the Third, and his Lord Chief-Justice of *Bank le Roy* (Lord Mansfield,) and other cabinet ministers: for disavowal, it was according thus dealt with. I saw the book, and turned it over; but did not buy it. For many years past, I have made fruitless search after it. Could a copy be recovered, a second edition might be enriched with valuable matter from Lord Eldon: a specimen may be seen in "*Indications respecting Lord Eldon*," inserted into "*Official Aptitude Maximized—Expense Mimimized.*"

[b] See "Official Aptitude Maximized—Expense Minimized."

of judges, the high and intellectual species of labour you expect from them ought to be *amply*, but not *extravagantly*, paid for. But what I say in point of *principle*, is, that, generally speaking, their remuneration ought to be by salary, and not by fees." "And not by fees,"—see here *profession*:—for *performance*, see his Lordship's schedule the second, with its eleven sources, out of which *fees* are made to spring. All this talking backwards and forwards we have had, and here we have the result of it: and thus we have before us, and in senses more than one, his said Lordship's *principles*.

If, in the exposition above given of these same so-styled principles, any errors should be found, the cause of them may perhaps be—it may at any rate be thought to be—in the author's being in that case in which, in days of yore, he was by the noble lord looked upon as being—namely that of one "knowing more of books than of men." Assuredly, whatsoever in this particular may be the case with other men, to myself it has not happened for so many days in the year as it has to his Lordship to be in the midst of, and have for the object of *knowledge*, the noble brotherhood of those high and mighty lords, who, on every occasion, as they never cease to bear witness, have for the sole objects of their care, church, king, and people (church first, then king, then people,) with only now and then a small scrap of care for their respective families; and even this never otherwise than in due subordination to that care paramount, which has for its objects the said church, king, and people: too noble, each one of them, to take any thought for himself, had he not his noble friends for flappers: their motives, accordingly, on each occasion, diamonds—diamonds of the very first water—water of the purest kind, scorning the use of filtering-stones; their breasts having for composition and covering, instead of flesh and blood, plate glass; having, that is to say, either having already, or at least (as was the case with a certain noble lord in former days, when he with "all the rest of the *talents*" were in power) wishing that they had.

Let me not here be accused of exaggeration. In all this, no more is there of exaggeration than had place in the language of the noble and learned lord, when, anno 1828, on the 7th of February, in his character of law reformist, he came forward

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To the operation of cramming fuller and fuller the pockets of functionaries, on pretence of securing aptitude, what shall be substituted? The answer has been already given—competition; that is to say, on the part of all candidates in whose instance appropriate aptitude, in all its branches, has been made manifest by the test of examination, as above spoken of under the head of proposed amendments.

So much for the principles of the noble and learned lord. Have you a curiosity to see a set of a different sort? Turn, then, to some of those books, which have for their author a person who, when, by Whig nurses, Radical principles were to be overlaid at their birth, and honourable noses were to be turned up against them, was spoken of as being a man who "knew more of books than of men:" turn to those books, and there you may see, for example, the two above-exemplified principles—the *greatest-happiness principle*—the *non-disappointment*, or say the *disappointment-minimising* principle. Is your curiosity strong enough to carry you any further? Go then to the principle which prescribes the conjunction of interest with duty—say the *interest-and-duty-conjoining principle*;[a] thence, on to the principle by which *official aptitude* is asserted to be augmented, not in proportion as official *emolument* is *augmented*, but in proportion as it is *reduced*;—these, with any number of others you please from the same mint. But by any one of these, were his Lordship to take it in hand (for, for the purpose of argument, even the *impossible* may be supposed *existing*,) by any one of them, were his Lordship to take it in hand and make application of it from the woolsack,—such a scene of nausea might be produced by it—such a scene as delicacy forbids the mention of.

In order to its answering its purpose, in what state should a principle be? *Answer:* It should be in the highest state of condensation; comprised in the compass of two or three words, consisting for example, of a *substantive* with its attached *adjective*, or (as some say) *attributive:* though the adjective may be a substantive used adjectively, and either the one or the other, or both, may be composed of words, two or even any greater number, so as there be not a verb: the words strung together in the manner of the name given to a parliamentary bill in the votes, and the name given to anything in the German language. Now, then, say *here*, for examples, "*greatest happiness principle*,"—"*non-disappointment principle*." In this way, the *principle*, with its two or three words, exhibits the substance, and performs the office, of a *rule*:—of a rule which, if expressed at length, would occupy perhaps more than as many lines. Now, then, why employ the matter in *this* form, rather than in that of a *rule*? *Answer:* Because, when thus reduced in bulk, it is, in every instance, *capable* of being made to enter, and accordingly always *does* enter, into the composition of a sentence: whereas a *rule*, and, in particular, the *rule* of which the *principle* is a sort of abridgment, can seldom find expression in a number of words small enough to admit of its performing this office.

In the instance here in question, not very exceptionable (it is true) on account of its length, how much soever on other accounts, is the form of words, by which expression might have been given to a rule suited to the purpose of conveying the advice which it was his Lordship's purpose to give, and see taken: and this advice was of the number of those which, on no occasion, find established, in noble breasts, any more than in honourable ones, any violent aversion to them—any very obdurate reluctance either to the receiving, or to the acting upon them.—*Make the remuneration of all offices as large as the people will endure to see it made;* in these words may be seen the *rule*:—*that noble and honourable younger sons, and eldest sons during the lives of their respective noble fathers* (not to speak of said fathers themselves,) *may be provided for as nobly as possible:* here may be seen the *reason* of the rule.

Now for the conclusion of this same principle—"what I say in point of *principle* is that, generally speaking, their remuneration ought to be by salary, and not by fees." "And not by fees,"—see here *profession*:—for *performance*, see his Lordship's schedule the second, with its eleven sources, out of which *fees* are made to spring. All this talking backwards and forwards we have had, and here we have the result of it: and thus we have before us, and in senses more than one, his said Lordship's *principles*.

If, in the exposition above given of these same so-styled principles, any errors should be found, the cause of them may perhaps be—it may at any rate be thought to be—in the author's being in that case in which, in days of yore, he was by the noble lord looked upon as being—namely that of one "knowing more of books than of men." Assuredly, whatsoever in this particular may be the case with other men, to myself it has not happened for so many days in the year as it has to his Lordship to be in the midst of, and have for the object of *knowledge*, the noble brotherhood of those high and mighty lords, who, on every occasion, as they never cease to bear witness, have for the sole objects of their care, church, king, and people (church first, then king, then people,) with only now and then a small scrap of care for their respective families; and even this never otherwise than in due subordination to that care paramount, which has for its objects the said church, king, and people: too noble, each one of them, to take any thought for himself, had he not his noble friends for flappers: their motives, accordingly, on each occasion, diamonds—diamonds of the very first water—water of the purest kind, scorning the use of filtering-stones; their breasts having for composition and covering, instead of flesh and blood, plate glass; having, that is to say, either having already, or at least (as was the case with a certain noble lord in former days, when he with "all the rest of the *talents*" were in power) wishing that they had.

Let me not here be accused of exaggeration. In all this, no more is there of exaggeration than had place in the language of the noble and learned lord, when, anno 1828, on the 7th of February, in his character of law reformist, he came forward

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[a] This principle, it is true, we may, by and by, see his Lordship himself holding up to view. Yes: but how? let *Pope* speak—

"Damn with faint praise, assent with civil leer;
And, without sneering, others teach to sneer."

nerally speaking, their remuneration ought to be by salary, and *not* by fees."

So much for *Mr.* Brougham: come we now to *Lord* Brougham. — *Mirror*, 22d February 1831, p. 409. — "When you remunerate a judge by *fees*, according to the *steps* of procedure, you expose him to the temptation* of encouraging *delay* and *expense* in order to increase his own emoluments, and thus, in *theory* at least, if not in effect, you set interest in opposition to duty. To be sure, the judges in the higher courts are not apt to be swayed by such feelings from the straight line of their duty, whatever be the *temptation*.* They are men standing in a high and conspicuous station — men *selected for their unspotted and unimpeachable integrity*,† as well as for their great experience and *general fitness*‡ *for their exalted stations*. They are likewise *under the observation of a watchful public*,‖ and *a jealous Bar*,§ and many of them have seats *in either House of Parliament*,¶ where they may be called upon, as responsible officers, to explain any part of their conduct which may be considered objectionable. Nevertheless, I am of opinion that public men, however high their character may be, ought not** to be placed in circumstances in which their in-

with that glorious undertaking of his, by which, "all exaggeration" expressly denied, perfection was virtually promised to the judiciary establishment, with its system of procedure — all by so simple an operation as that of taking in hand any twelve men, so they were but called good and true, putting them into a box,[a] and thus, as in an *omnibus*, travelling them over the whole field of judicial procedure.

To return to *purity*. In this same state of purity his Lordship will not deny them to be — noble lords,—noble, and most noble, right reverend, and above all, most reverend—all of them together. No, assuredly; for in it, lest it should escape the memories of this "manner of men," never is he tired of reminding them that they are.

As to those judges who will have to bow down to him and hail him as their creator — those, to wit, whom we shall see him alluding to under the name of "*higher judges*," — they are not, it appears, regarded by him as being in that state of absolute purity, after the manner of pure gold rendered so by having passed through the refiner's fires: some little alloy of a less noble metal we shall find his discernment recognising in them: encompassed as they are with "*temptation*," they may be conceived at least, if not absolutely believed to be, capable of yielding to it: for their being brought into that same desirable state, there needs however but one simple and obvious recipe, which is their being placed in that same exalted and purifying situation of theirs, in which all men and all things are pure.

To these judges, the said creator, of course, considers himself as aggregating his said creatures—his chief and "other judges," and by that same simple operation enduing them with the requisite portion of *purity*: in which glorious state we shall for the moment leave them.

Thus much for the entire foundation of the noble and learned lord's magnificent edifice: the foundation, composed as it is of "*principles*," four in number; of which principles, the third, when it comes to be laid down, is styled, not a *principle*, but a *proposition*; and the fourth, which is styled a *principle*, is *not* a *principle*, but a composition, composed of three *propositions* — namely, the three propositions which the reader has been seeing, and with which, in a degree best known to himself, he cannot fail to have been edified.

* *Temptation.*] Behold here — and not here only, but in page 415 also—the noble and learned

[a] Self-published speech of Henry Brougham, Esq. M.P., 7th February 1828, on his motion for a law reform commission, p. 5.

eyes wide open to the *temptation*, and, at the same time, the noble and learned mouth saying its prayers to the lords, and beseeching them to deliver him from that same evil, into which, at that same moment, he was doing what depended upon him — he was putting his rhetorical powers to the stretch — for the purpose of leading and plunging over head and ears himself, and the whole train of the creatures he was occupying himself in the creation of. Witness schedule the first of the *bill* in question, in the last edition of it; witness the *act*, into which in due course, it was predestinated to be transfigured, with its schedule the second, and the several fees contained in it.

† *Unspotted and unimpeachable integrity.*] Scene, *Utopia*. Of the romance so intituled, characteristic features are, effects — felicitous effects, existing without causes; figs growing on thorns; grapes on thistles.

‡ *Fitness.*] By what means ascertained? Here you have the *effect*: and where have you the cause?

‖ Over men such as they are, and selected as they are, what need of any such or any other inspectors?

§ *Jealous Bar.*] Interested in all the abuses by which the judges in question make their profit; anxious to be raised to the situation in which that profit grows, and in those same situations to come in for shares in that same profit: eyes closed, as is the oyster shell against the knife, against those same abuses. Jealous men such as these? O yes: but of what? Of everything which can lessen the abuse, or prevent the augmentation of it: such being their interest, and without so much as a duty, as in the case of those same judges, for a counterbalance to it.

¶ *In Parliament.*] Occupying thus two incompatible situations — undertaking the fulfilment of two duties, the conjunct fulfilment of which is (unless one and the same man can be in two different places at one and the same time) physically impossible: one of them a situation in which, if accused, each man will be his own judge; and thus, by the assurance of fruitless and uncompensated odium, stopping the mouths of all who might otherwise be accusers, and enjoying the assurance of impunity for every profitable and every agreeable mal-practice.

** *Ought not.*] Yes; of opinion that they ought *not*: and this at the close of a string of arguments for which the noble and learned brains have been put to rack, for the purpose of making us believe that that which, in consideration of the danger, "ought *not*" to be done, may, under and in spite of that same danger, be nevertheless done; and which he accordingly proceeds to do.

terest comes in conflict with their duty. But even if it were certain that his interest would succumb to his duty, it is of the greatest importance to avoid placing a judge in a situation where he must be an object of jealousy and wary suspicion.*

"Such are the grounds on which I contend that even the *higher judges*,† who act under the eye of a watchful public and *jealous Bar*, and who are themselves men of *learning* and *integrity*, the least *likely* to be swayed by *interested* and *selfish* considerations,—that *even they* ought not to be placed in situations in which it is *possible* for *any* one to *suspect* that they can have any *other* object than that of the diligent, active, and impartial performance of their respective duties. Now, if this be the principle which ought to be kept in view, in reference to the *higher* judges, it is *still more important* to act upon it in reference to all inferior officers of justice. They do not stand upon such *high* and *open* ground — they are not so much in the view of the public — they are not so *immediately responsible* to parliament—and they ought to be emphatically excluded from such situations, even if the judges are not.

"There is one *nicety* in regard to this point which ought to be noticed. A judge doing his duty under the eye of the public will be induced to perform it well and diligently, since upon its due and diligent performance will depend his fame and estimation with the public, and this although he should be remunerated by a salary, and not by fees. But it is not always the same with inferior officers; and I am told that in *Ireland*, where an alteration similar to that which I propose relative to the judges has been made, some inconvenience has been felt from remunerating inferior officers by salaries instead of fees; for it is said

* *Suspicion.*] Whereupon, having strained every nerve, and squeezed out what is above, for the purpose of satisfying us that *fees may* be allowed without the production of preponderant evil, he says they ought *not* to be allowed: and thereupon proceeds to allow them to the judges, of whose benefices *he* is patron, and whose profits are accordingly *his* profits, and for whom, for the multiplication of those profits, he provides the *occasions*, twelve in number, which form the matter of the second of the two schedules.

† *Higher judges.*] Higher judges indeed! — as if, in those same *higher judges*, the appetite for fees were less rabid than in the criers of their respective courts; as if the existing system, with all its atrocities, by which the cry for law reform has been called forth, has had any other cause than the rabidness of the appetite of those same judges, and those "whose estate they have" — with their hunger and thirst for the delicious matter of which those same fees are composed.

"Men of learning and integrity! .... least likely to be swayed by interested and selfish considerations," ... men of whom it is barely "possible for any one to suspect, that they *can* have any other object than that of the diligent, active, and impartial performance of their respective duties:" such are they, under the painting brush of his Lordship: in a word, the *in fœce Romuli* notwithstanding, as to every thing but sex, youth, and beauty, so many Cæsars' wives in small-clothes are these same learned judges.

Behold here the imagination of the then learned, and now noble and learned rhetorician, mounted in one of his air balloons, and in its way to the moon touching at the planet *Utopia*, and, in the person of one of the judges of that region, thus sketching out the portrait of a Westminster-hall judge. Now, then, — these vagaries, were they mere flights of poetry in prose, flights taken for mere self-amusement or a *Forget-me-not*, no notice would, on this occasion, have been taken of them: had they been the production of a Westminster school-boy, a silver groat would have been given as an appropriate reward for them. But no! all this is acted upon — acted upon as if it were literally correct and true; and accordingly, the means of self-payment *ad libitum* — the means of gorging themselves with the plunder of the afflicted — secured, in so far as words from this quarter can go, secured in and to the hands of these same judges.

Men the most distinguished for their success in "the indiscriminate defence of right and wrong," by the indiscriminate utterance of truth and falsehood — men the most distinguished for their success in the most mischievously and shamelessly mercenary of all professions, presumed thus to be above all others most disinterested! And *cui bono?* for what all this laudation? for what but for "valuable consideration?" By successful laudation of a prosecuted murderer or swindler, nothing more was to be got than the fee — the five guineas, once paid: whereas from the laudation thus bestowed upon every man on whom a judgeship shall have been bestowed, that profit was in contemplation which has accordingly come into possession — namely, the profit composed of the difference between a bounded mass of emolument in the shape of *salary*, and an unbounded ditto in the shape of *fees*.

Oh the ingenuity — the exquisite ingenuity of this contrivance! A time there had been, when, the purpose being thought to require it, condemnation was passed by him on that pestilence, and, reasons on that side being in existence — reasons, and those unanswerable ones, — those same reasons, or some of them, were accordingly adduced. Now, the plague being now to be inoculated, what was there, that, for this purpose, after what had been done, could be done? what was there that the nature of the case furnished and admitted of? To answer this question, and do what it was possible to do towards undoing his former untoward doings, — behold him taking in hand this same infection, — and, to put it in good odour, infusing into it the only semblance — faint as it is — the only semblance of a reason that the nature of things allowed the power of ingenuity to find for it. This is a use which it *would* be capable of being put to — but in what case? In a case which can never happen. Having thus taken the benefit of the only chance of success, which he saw the nature of things furnishing, then it is that he turns round — takes in hand this bit of a reason, such as it is, and employs it in the propagation of the profitable pestilence, and thus repairing the antecedently false steps.

that the consequence has been, that these officers are disposed to earn their salaries more easily than, and not so well as, formerly, and that they do not perform their duties so actively as if their remuneration depended on fees.

"But I think the *true distinction* may be made, and the *line drawn somewhat in this direction. Those officers may be made dependent on fees altogether, where the multiplication of the fees shall not depend on their own discretion.*"

Mirror, 22d February 1831, page 412. — "If those allowed to remain were made not *dependent* on fees, that would be an improvement.*"

* Improvement! O yes: a capital improvement. *Dependent* — *independent* — capital, delightful tools to work with — to work well with — this same pair — this loving pair — not the less loving by being opposites. Yes: here we have again our old acquaintance — *Aptitude is as opulence.* On the former occasion, it was the *intellectual* branch that was to be provided for: provided for, but in joint tenantcy with the two other branches — the *moral* and the *active*: the provision now made has the moral branch all to itself.

Aptitude is as independence — this is the maxim now: and can independence be too complete? No, surely. There we have the *maxim*: now behold the application.

Be the man who he may, either he is already rich, or he is not: if yes, in that case, be he ever so rich, he cannot be made too independent. If he is *not* rich already, — in that case the reason is the same, but the need is more urgent; and the quantity needed is the greater, the further he is from being rich already.

Everything cannot be done at once. Stinginess — just now, stinginess is the order of the day. Stinginess being so much in fashion, his Lordship feels it prudent to content himself with his fifteen hundreds a-year, his two thousands a-year, and no more than one three thousand a-year: and so, for some time, things must perhaps continue. Wait awhile, and there sits Sir Robert Peel, who has a book, a leaf out of which his Lordship has at command, and may borrow with advantage. Sir Robert is a great admirer of Lord Bacon: he is brimful of the noble philosopher and chancellor; he has him at his finger's ends. The great departed statesman is *prayed in aid*, as we lawyers say, by the great living one, when any of his great things are to be done. *Fiat experimentum*, was the characteristic motto, on the strength of which the fame of Bacon has soared to a height so much above that of all other men. *Fiat experimentum*, was the motto of Lord Bacon; *Fiat experimentum*, is the motto of Sir Robert: he is for doing all good things gradually; he is for *consolidation*, to the exclusion of *codification*. He is for going on giving to every man the possibility of knowing what he is to be punished for not knowing: going on — but at such a pace, that after some hundred years employed in doing it, the business would be still to do; and at this rate of travelling his Lordship may, at any time, without prejudice to his own plans, be in full accordance.

Now then for one of Sir Robert's practical comments on Lord Bacon. Behold it in the Stipendiary Magistrates' Salary-raising act. At the first institution in 1792, it was £400 a-year; in the eyes of the magistrates themselves, this £400 a-year was sufficient; plain proof — if not, they would not have accepted it: to them, it was satisfactory; *Patrick Colquhoun*, whose activity was greater than that of all the others put together, and who in all other respects was fully equal to the best of them — Patrick Colquhoun, who was known to everybody, and the only one of them who was known to anybody — said as much to the author of these pages. But, though in the eyes of the *incumbents* there was enough of it, not so was there in those of the noble or right honourable *patron*, whoever he was: and so it was made half as much again: it was made £600 a-year. Well, what followed? When they had got it — this same £600 a-year — still they were not everything that could he wished. Thereupon came Sir Robert, and gave them a couple of hundreds a-year more; the £600 he made £800. Now then, what was to be done with this £800? As to future men there was no difficulty. But then, there were the then present ones: what to do in regard to them. What? Oh, they were entitled to it on a double account; so indifferently had they behaved themselves, that for this reason it had been found necessary to give them the £200 a-year more, to make them behave better: at the same time, so well had they behaved themselves, that gratitude joined with equality and consistency in requiring that these known and tried men, by whom such merit had been displayed, should not be left unrewarded, when the resolution was taken, that men unknown and untried should be thus advanced. Still this was but a sort of degeneration: for at the first augmentation they got half as much again as they had before; and at this second they got no more than one third as much. But Sir Robert was faint-hearted: his Lordship is made of better metal; and he will act accordingly: let but occasion call, and, casting off all disguise, he will stand up and say (speaking of his batch of judges with their followers) — Yes; the worse they behave, the more they shall have. The only man he can be afraid of is — Sir Robert Peel; and, on this ground, Sir Robert will feel his mouth stopt; stopt by a precedent of his own making; stopt — or (as we lawyers say) *estopped* — prevented by an *estoppel*.

In regard *to objects*, one man has one sort of object; another man another sort of object. Then, in regard to *experiments* — experiments in pursuit of the object — one man is for one sort of experiment; another man, for another sort. My object is a double one; to secure official aptitude, and to save money. For securing the aptitude, I have the *securities* hereinabove referred to, and hereinafter exhibited: for saving the money, and at the same time and by the same operation providing those same securities, I employ an already approved instrument: — yes: the very instrument, which in all other cases everybody is for employing, and employs accordingly. Good: but this instrument — what's the name of it? — The name of it? Why, *competition!* Now for an exhibition — Scene. Right Honourable House. At the sound of the word *competition*, out pours a deafening scream in grand chorus — "Competition! O horrid, horrible, and horrid-

February 22, 1831, *Mirror*, p. 414. — In page 414, immediately before the mention of

a *bottom*, mount up to the text, and therein, thus you will find it written:—"That noble and learned lord (Lord Eldon) laid a report on the table of this House respecting the taking of *fees as salaries*, in which, on examination, your Lordships will find some *excellent* principles laid down. Another report was presented to the House in the year 1798, in which the subject of fees is *again* taken up. It is there said, that no inquiry should be made whether a fee was claimed by *established practice*, but whether it was one which *ought* to be continued, and, if it was *not*, it should be *cut off*. Accordingly it was recommended that *some* of the fees then existing should be abolished, and amongst others those called *copy-fees*, as unfit to be continued. I might also instance the recommendation of the Chancery Commissioners in 1826 — that fees, *as salaries*, in *most* cases should be done away with."*

22d February 1831, *Mirror*, pp. 414, 415. —"Bottomed on these recommendations, I propose to your Lordships that *no fees* shall in future be taken by the *masters*, and I would

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est horror!" The cry subsided, and the faculty of speech, and something in the guise of argumentation retained, comes thereupon something to this effect:— Competition? yes: good in every other case: good as applied to furnishers of *goods* of all sorts: good as applied to furnishers of *personal services* of all sorts:— yes: good in *those* cases: but in *this* case, what can be more absurd. Absurd? What, are not *official* services *personal* services? Yes: but these must be excepted. Excepted? and for what reason? For what reason? O don't talk of reason. No — not on *this* occasion: occasions there are, on which there is nothing for reason to do: matters there are, which reason has nothing to do with, nor they with reason: matters, if applied to which, reason is out of place. Yes, that there are; and this is one of them.

So much for Right Honourable House; and, to save trouble, the same scene may serve for Honourable House.

Mark with what refinement and astutia it is worded — this so-called *improvement* of his Lordship's. Is it that there shall be no fees? Oh no: only that, how much soever there is of them, the learned persons are not to be left "*dependent*" on them. Accordingly, in the first place, there are to be fees, at any rate: this for the sake of the *stimulus*; and as to *what* fees, see section the second, as above. But whatever may turn out to be the amount of those fees, what a sad thing would it not be, if men were left dependent on them? — and, so uncertain is that amount, would not this be the case, if something certain were not added? Thereupon comes the necessity of a salary; which, as independence cannot be too complete, cannot (so you have seen already) be too "*ample*."

* *Done away with.*] A delicate matter this:— a truly delicate matter: and, each time, what is it that has been done? *Answer*: Just what was intended to be done.

Anno 1798, was made *one* report: and what was done? That which had been intended.

Anno 1826, another: and what was done? That which had been intended.

Anno 1831, was made this speech: this speech made, and in pursuance of it a bill brought in, and that bill passed into an act. And now, what

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was intended to be done? *Answer*: That which has been done accordingly. Here is a malady— a most excruciating malady: compare the operators, and note their several performances. The former operators confirmed it; but they did *not* exasperate it; this last operator has confirmed it, and he *has* exasperated it. Immediately in his schedules will this be seen by readers, and in process of time, as the act comes into operation, felt by suitors.

"*Fees as salaries?*" No:—*et sic vide diversitatem*, as Lord Coke says. Take them not *as* salaries. No: take them as something else; take them as anything else: for example, as constituting a *stimulus*; and by the first opportunity let men "behold how good and joyful it is:"— call it "a *fair stimulus*." Capital indeed is this distinction — choice the discernment exemplified in the making of it! Behold the stress laid upon it; figure to yourself learned lords and learned gentlemen, one after another, mounted upon it a cock-horse, and riding off upon it.

"*Excellent principles.*" Yes, excellent principles doubtless. But what *were* they? (says a reader.) What were they? answer I: this is more than I know; and I will spare to *myself* the labour of looking out for them, and commenting on them, and to you the labour of reading them. What he has now before him may surely, and without injustice, be taken for a fair sample of them. And the result of them—what is it? It is this: be the fee what it may — if it ought not to be continued, it ought not to be continued: if it ought to be cut off, it ought to be cut off.

But, even after taking the benefit of this reservation — of this distinction, in virtue of which they might be taken, in so far as they were not taken *as* salaries — not taken *quâ* salaries, — even they — all of them — all the ingredients in this sweet paste—are they to be done away with? Oh no; that would be carrying things *too far*: *some* of them, yes; but only *some* of them. Thus far anno 1798. But, anno 1826, with the benefit of a course of consideration carried on during the interval of eight-and-twenty-years, learned lords and gentlemen had stretched their legs, in such sort as to have got a step farther: the recommendation (as we see) then was — that "*fees as salaries* should in *most* cases be done away with." What! not in *all* cases? not without the benefit of this distinction? Oh no: What! and, not even *with* the benefit of this distinction? No; not even in this case: that would still be going too far; only in *some* cases; whereupon, in all the other cases, in every one of which the same sort of mischief is produced, they remain established. Behold the problem solved: *quod erat faciendum est factum*; and $x = y$ are found to be $= 0$.

Hang half and save half, says a familiar adage; this adage learned lords and gentlemen have taken in hand, made it into a maxim, and improved upon it: say *hang half and save the whole* —saying this, you have it in its improved state.

Look at the fees called copy-fees; on them may be seen a mark set: they are marked out to serve as a scapegoat to be sacrificed. To be sacrificed? and why? That the rest may remain unsacrificed, and be saved. But this scapegoat, *was* he thereupon sacrificed? has he *since* been sacrificed?

have those of the *clerks* so regulated as never to exceed a *fixed maximum*;* and that, while all great *temptation*† to *multiply forms*, and create delay and expense to the suitors, are

Quære ceo. Is he intended to be sacrificed? Wait and see.

Directions to public servants, such as legislators and reporting chairmen of committees; taken from Dean Swift's "*Directions to Servants:*" —When you have anything to report upon, what honest men wish to see done away with, and you do not like to part with, recommend that it shall be done away with, but take care that the quantity so recommended to be done away with, shall be an indeterminate quantity; "*some*," for example; or in case of pressure, you may even say *most:* in the *tout ensemble* of this recommendation, people will see your *good disposition*, your *good intention:* in the qualifying adjunct *some* or *most*, they will see your *caution* — your *prudence*. Seeing all this, how can they be so unreasonable, these same people, as not to be satisfied? Well then; if they are satisfied, then *everything is as it should be:* and there the matter rests.

And, what if they *had* been *intended* to be abolished? what if they had been *abolished* accordingly — that is to say, in so far as it was and is in the power of parliament to abolish them? What *then?* Ask Lord Tenterden. The *table* of these fees hung up or not hung up—hung up, and in the sight of everybody — the fee in question being of the number,—will it be thus kept from being exacted? Oh no; not it, indeed. It will not the less continue to be exacted; at any rate, if it be under and in virtue of a situation the patronage of which belongs to his Lordship. Well; but suppose a table of fees established — a table stating the several *occasions* on which fees may be taken, and the fees that may be taken on those several occasions, and on this or that occasion a fee taken to an amount greater than that which is so allowed:—suppose this done, and the extortion brought before his Lordship, will not the extorter, as such, be punished for it? Oh no. What then? Why, restitution will perhaps be ordered. Suppose, for example, six shillings the amount of the fee allowed, and ten-and-sixpence the money taken: you have but to make application to the court; and, so it be not in the way of a criminal prosecution, but in a quiet *civil* way, it will cost you not more than some number of times as many pounds as the shillings you sue for; and restitution of the whole ten-and-sixpence, or of the four-and-sixpence difference, will or will not be ordered:* and so *toties quoties*, as often as you please.

There you see the power of parliament — there you see the effect of it, when applied with the purpose, entertained or pretended, of preventing extortion by, or in any way direct or indirect to the profit of, learned judges.

* *A fixed maximum.*] Each fee a sum determinate and *unincreasable*? Yes: if indeed *that* be the meaning, so far so good. But of those same unincreasable sums, suppose the *number* left *increasable, ad infinitum*, — increasable, at the pleasure of those whose profit rises in proportion to the aggregate amount of them; increasable, by means to the existence of which the noble and learned eyes were open, in the manner and to the degree that we have seen: and these sums accordingly, by those same noble and learned hands, put into the pre-eminently learned though not ennobled pockets; between which and the noble one there is a communication. Suppose this, and you will see in what way it is that, upon his Lordship's plan, "*all temptation to multiply forms*, and create delay and expense to the suitors" is to be removed. Moreover, here again comes the "*stimulus:*" for, whether *by* or *notwithstanding* such removal, "enough (their Lordships are assured) will be left as a fair *stimulus* to the *speedy* dispatch of business." For refreshment, preparatorily to this part of the speech, instead of an orange, presents himself here to my imagination his Lordship taking out of the learned pocket a bottle, and out of the bottle a good swig of *Lethe* water, to enable him to forget that, in the case of an office sweetened with emolument, as the office has, so has the patronage of it, a determinate value; and that this value rises, and that in a determinate proportion, with the value of the office.

Fixed or unfixed: — in one or other of these two cases must be the amount of this same *maximum* of this same *muriate of gold:* if fixed, off flies the *stimulus:* if unfixed, then flows in the *temptation* — that temptation, which, by men in the situation in question, always has been yielded to — that temptation, which, so long as man is man, will continue to be yielded to — that temptation, which, seeing all this, and seeing it so absolutely irremoveable, his Lordship is so determined to "remove."

† *Temptation.*] Yes: here we have *temptation* again. Already we have seen him stating what the temptation is — showing, demonstrating, and by uncontrovertible reasons, that it is one which no judge, nor any officer in an office subordinate to that of judge, ought to be exposed to; and thereupon, eyes wide open to the irresistibleness of it, and the mischievousness of it, comes the determination to expose them to it — to expose them to it, all of them, judges and their subordinates together: which said determination we have seen accordingly in his bill, now passed into an act, carried into practice.

Yea, verily; — here have we this same *temptation* again in this same speech, taken into consideration a second time — laid before their lordships and the public a second time; and the consequences of it a second time full in view; the determination a second time formed — the determination to expose his judges to it — his judges and their subordinates, — and thus to bring upon the whole country the evils so fully in his view — the evils of factitious expense, delay, and vexation, with their accompaniments, *denial* and *sale* of justice: — sale of it to the comparatively few — denial of it to all besides; that is to say, to the vast majority of the thus oppressed and plundered people.

But for all this evil, a compensation — a *per contra* — is now and in the same breath spoken of as provided: and by this same *per contra* we are to understand the evil to be overbalanced. And this same *per contra* — what is it? It is neither more nor less than a *stimulus;* namely, the old *stimulus*, which we have seen already, and which, for the present purpose, is, on the present occasion, again brought forward, — and, in that its former character, re-exhibited.

* In *Official Aptitude Maximized, &c.*, see *Indications respecting Lord Eldon*, pp. 359 to 362.

removed, enough will be left as a *fair stimulus** to the speedy dispatch of business."

22d February 1831, *Mirror*, p. 415. — "These high incomes from fees are not confined to the Masters. Their *clerks* also have incomes averaging about £1600 a-year each: two have as much as £2500. There is only one who has as little as £1000, because, in his case, I think very properly, it was refused to allow any fees to be taken. I must own I look upon *those* '*gratuities*,'† as they are called, as in every respect most objectionable. If I were not disposed to adopt a circuitous mode of describing those sums, as gratuities for administering what is called *justice*, I should be tempted to call them by that brief but expressive name by which the public would call them — '*bribes*;' and I shall be able satisfactorily to prove them such to your Lordships. These *gratuities*, or whatever other name they deserve, are *not* taken by the *Masters*; I wish they were, as then the *high character* and station of the Master would prevent the imputation, that for such things *justice was sold* in one of the highest of our courts. I could wish that, even in *that* case, the *temptation* did not exist; but, in practice, the taking them by the Master would not have the same bad effect as in the case of the *Clerk*."

Page 417. — "You do not do so in other cases: — in the Court of King's Bench, for instance, you pay the judges out of the consolidated fund. It may be correct to take these fees from the suitors, to levy on them all the expenses of the proceedings; it may be proper to make Chancery suitors pay the judge on the Bench, and pay the expenses of the Chancery Court; it may be right that the suitors should be taxed — all this I will admit;‡ but then I contend that no more

* *Fair stimulus.*] Yes; sure enough, here we have another old acquaintance — a very old acquaintance. It has now, however, received a considerable improvement. In the former instance, on the former occasion, it was a "little" one; that was the best and the most that could then be ventured to be said of it. The time being (it seems to have been thought) come, the epithet *fair* is applied to it, and with this polish put upon it, it is presented to us for acceptance: and such (it seems) is its virtue, and so ample the service it always has rendered, and never will fail to render to justice, that the good effects of it are regarded as overbalancing, as just mentioned, all the evil ones apprehended from the *temptation* in conjunction with which it is now mentioned.

The case (as we have seen) is — that, for the measure in question — namely, the establishment of the mode of remuneration thus (as we have seen) exposed by his Lordship — for this measure, composed of the real evil, and the imaginary good by which that same evil is supposed to be overbalanced, he has now (you see) if you will believe him, found a *bottom*. By this *bottom* (it must be presumed) what is meant is a *justification*. The justification being thus pleaded, it would be injustice not to exhibit it: here accordingly it may have been seen exhibited; and of the *breadth* of this *bottom*, if such it be, we have, as above, been taking measure.

Good heavens! (says somebody) what a pother is all this! — all about a word — a single word! True: a single word; but, once more, think of what importance it is — this same word! Before you, you see a man to whom, in eloquence and deceptive language, scarcely does the whole country contain any known rival — this man you see calling forth his matchless powers — whatsoever of them he can muster — and employing them in support of this inexhaustible source of human misery — the practice of denying and selling justice — selling it to the tens of thousands, denying it to the millions, and thus devoting the millions to wrong without remedy: and in this one word is contained the whole of what the vast arsenal of his resources can furnish for the defence or so much as the palliation of the enormity: this considered, a few lines, or even pages, can they be grudged or justly taxed with superfluity?

† *Gratuities.*] Confounded, in a manner, with fees, are these same gratuities — we see how. After speaking of "*fees*," he immediately after, without having noticed any distinction, says "*these gratuities*." Things in themselves so different, how came they here to be thus confounded? Foul as is the abuse of fees so extorted, as has been seen, — still fouler is the abomination, to which the name of *gratuities* has been attached. In the case of a fee, the quantum is fixed; in the case of a gratuity, it is unlimited: *predeterminate* limit it has none; limit it has none but that which is determined in each *individual* instance: determined, and, by what? By the *need* which the suitor has of the services of the functionary; that is to say, by the *evil* which it may happen to him to be afflicted with, if, at the time in question, those same services fail of being performed: by the amount of this *evil*, coupled with the *tempers* of the two parties — namely, on the one part, the degree of hardihood; on the other part, the degree of timidity. From one and the same solicitor, a bold functionary will exact any number of times the amount that a timid functionary would: from a timid solicitor, one and the same functionary will exact any number of times the amount of what he could from a resolute one: the *solicitor*, I say, rather than the *suitor*; the case being — that, throughout the whole field of regular procedure, matters are in such sort arranged, that, for the suitor to see to his own business — to look after, and take care of, and make provision for, his own interest, — is impossible: the hands in which the care of it is lodged being those of a set of other men, in confederated swarms, of each individual of which the interest is, on each occasion, in relation to that of the *bonâ fide* suitor, in a state of diametrical and constant opposition.

‡ *Admit.*] Somewhat wide admissions these. However, if given no otherwise than hypothetically, and for the purpose of the argument — not categorically and absolutely — let them pass. Let them not, however, pass unheeded — these grievances thus lightly dealt with; look at them a little more attentively.

1. Grievance the first — *Taxes on justice*, or say *law taxes*, in the shape of *stamp-duties*. For receiving on their shoulders a portion, whatever it be, of the burthen laid on the people for the aggregate of the expenses of government, — selection made of the individuals already suffering

should be taken from the pocket of the suitor than goes to pay the expense of the court and judge. Instead of this, however, I recommend you to make the judges of the

under a particular affliction, in preference to those who are not suffering under any such affliction: the amount of this burthen varying, in unknown quantities, upon a scale of such length, that, in an unascertainable proportion, the victims even sink under it, and are completely crushed. Would you be consistent? To these same objects of your oppression, add then the lame, the blind, the maimed — and those afflicted with the rheumatism, the gout, and the stone; and, for further consistency, if these be not enough, the orphan, the widower, and the widow, for and during the first year of mourning: all this for the purpose of keeping off the burthen from the members of the community at large, on whom, when distributed among them, it would lie but as an impalpable powder, the pressure of which would be altogether imperceptible.[a]

2. Grievance the second—an *abuse*:—taxes on justice in the shape of law fees. Persons selected for the being subjected to the burthen, the same; the produce carried to the particular account of the expense employed in the remuneration of judicial functionaries; some rendering more or less service, some rendering none. Distinguished from and above the before mentioned is this second tax, by its capacity of being augmented — we have seen how — augmented to the utmost — by those whose interest it is so to augment it, and who, accordingly, to the power add constantly and on each occasion the inclination, the determination, and the endeavour so to do. To the burthen imposed, as above, by the *legislature* in the shape of *stamp duties*, augmentation cannot be made by any other hands than those of the legislature. To the burthen imposed, as above, by *judges*, for their own benefit, augmentation can be made — made to an unlimited amount, and accordingly has been made — by the hands of those same judges; and of course, unless and until the power of so doing is taken out of those same learned hands by the legislature, will continue to be made.

Not uninstructive is the mutual relation and difference between the two grievances.

Nor should we here forget a vulgar error — an error which has been laid hold of, and converted into a fallacy by those who profit by it. According to them, *taxes upon justice* (not that this is the denomination employed by them) — taxes upon justice operate (say they) as all taxes do, in the way of *prohibition*, and thence in that of prevention: litigation is a bad thing; they operate, and in proportion to their amount, as preventives to it: they are as *bridles* in the mouths of the litigious. So says error: what says truth? That these bridles, supposed to be put into their mouths, are arms put into their hands; that is to say, if, and in so far as, under the appellative of *litigious* you include him who in the burthen beholds a means of obtaining for himself an undue benefit, by giving effect to an unjust demand, or by depriving of effect a just one.

Not that they are not *bridles*: too true; bridles they are;—but on whom? On whom but the poor man, who, by the rich man, has been fixed upon as his victim? On him they are not merely *bridles retarding* his motions; they are *ropes*, by which his hands are tied behind him, his feet tied together, and all possibility of defending himself wrenched from him.

Taxes upon justice — checks upon litigation! Such being the doctrine,—read, mark, and learn, who the doctors are by whom it is propagated. They are the dishonest non-lawyer, and his ever-ready accomplice the fee-fed lawyer: the non-lawyer, who beholds in them, and finds in them, an instrument, applicable, and with certainty of effect, to the purpose of cheating his *creditors*; or on pretence of debt, wrenching property out of the hands of men who are *not* his *debtors*: — the lawyer, to whom every non-lawyer is what a sheep is to a wolf; and every brother-lawyer, what a wolf is to a wolf of the same herd.

By the lawyer, however, a distinction is of course noted — the distinction between the law-taxes imposed in the shape of *stamp-duties*, and the law-taxes imposed in the shape of *fees*. The stamp-duties he will probably not be averse to the abrogation of; on the contrary, he will rather be desirous of it: for, the greater the defalcation from the aggregate of those which are expenses from which he does *not* derive profit, the more is left in the pocket of the suitor to be employed in that same suit, and in any other suits from which he *will* profit. In so far as he contributes to the removal of these bars to justice, he will exhibit an apparently good title to the praise of *disinterestedness*: he will wear the face of a law reformist: and, in that character, he may look for more or less of that public confidence, by which he will be enabled, with more or less effect, to act in the character of an adversary to law reform.

So likewise even in regard to those taxes, the produce of which flows into the common pocket of the profession; so many *divisions* as that receptacle contains, so many groups of profit-seekers, from each of whom law reform may receive support at the expense of the others, and without loss to himself.

By the *barrister* class, for example, may be advocated reforms by which defalcation will be made from the profits of the *solicitor* class; by the common-law barrister, from those of the equity class; and *vice versâ*. So again, as between speaking barristers and the various sorts of mutes called *chamber counsel*. In the power of any of these it may be, without any considerable real sacrifice, not only to profess themselves reformists, but even to act as such, and thus exhibit the appearance of disinterestedness.

To the author of these pages, at various times, advances have been made by learned gentlemen, with whom he had not the honour to be personally acquainted; and, of the truth of the above observations, he finds, in every such civility, exemplification and demonstration. Fre-

[a] Of the above-mentioned arrangement, the mischievousness and blindness were demonstrated six-and-thirty years ago — demonstrated anno 1795 — in *Protest against Law Taxes*, by the author of these pages; and taken off in pursuance of it was a considerable part of that portion, the produce of which, under the name of *stamp duties*, goes to the public revenue for all purposes, and could not be increasable by judges; this taken off, while the whole of the portion here in question — namely, that which has for its purpose the paying the judges, and which is increasable by those same judges, and to an unlimited amount, to and for their own benefit, was left on.

Court of Chancery an annual ample allowance, and to discontinue the present clumsy unjust method of raising from the public and from the suitor three times as much as would pay the one Master and the one Master's clerk, which are all that are necessary; while, by doing which, you reduce the Masters to the positive necessity, in these matters, of increasing the expenses: — not that I blame the Masters, — I blame the system.* My Lords, these form the bulk of the changes which I contemplate effecting; and I have only shortly to refer to what I hope will prove to be the benefits to result from their operation; and these are, — a better decision of causes — a more full possession by the creditors of bankrupts' estates — a more speedy administration of justice to such creditors, and to all persons interested — a great diminution of business and delay in the Court of Chancery — and even eventually, probably, the saving of one of the judges in that court."

22d February 1831, *Mirror*, p. 419.—"I beg to remind your Lordships that if I have cut off seventy places from those in the dispensation of the Lord Chancellor, *I have also cut off* £7000 *or* £8000† *a-year from* his emolu-

Frequently is the observation made, that already, even among *lawyers*, there are, and in increasing numbers, *law reformists*: but, if true — as beyond doubt it is — small indeed should be the extent, in which it is expected so to be; otherwise than subject to limitations and exceptions such as the above.

An example — everybody sees how illustrative as well as illustrious an one — may be seen, even in the instance of his noble and learned Lordship. Exemplary has been his devotion to that one of the infernal deities whose name is *common law*; strenuous his exertions to garnish the pockets of her votaries with prog, picked out of those of her sister *equity*. Witness, *speech* of 1828: witness again the *local courts bill*; with plan and speech touching and concerning the same. For this phenomenon, would you find an explanation? Forget not to consider, that at neither of these epochs were the Seals in immediate view, and that the learned labours continued still employed, moulding into the bespoken shape the contents of the wonder-working "box."

So long as he is *man*, thus will *man* comport himself: to be angry with him for so doing, is to be angry with him for existing. But where, and so far as, a man's endeavours are in opposition to the welfare of the community, will any one say, that by his not being a proper subject for anger, the need of a defensive force for its protection, as against them, is in any degree diminished?

"Right . . . . to make the suitors pay the judge on the bench, and pay the expenses of the Chancery Court." Yes: those suitors who have wherewithal to pay, though it be their uttermost farthing. Well: but those of them who have no farthing at all; whether the suit found them thus destitute, or took it from them; these men, how are *they* to be made to pay it? No: to them justice is *denied*; to them, imprisonment is given in its stead: while, to those who have wherewithal to pay for it, "what is called justice" (to use his Lordship's so apt expression) — that same drug is *sold*, and continues to be sold, so long as they continue to have wherewithal to buy it — sold by, and for the benefit of, the judges and the swarms of other lawyers.

* *The system.*] Just twenty years ago — namely, anno 1811, in the work intituled *Théorie des Récompenses*, by the author of these pages, this same *system* was "*blamed*," if exposure of turpitude is "*blame*." The system? Yes; and the said *Masters* into the bargain, — if calling men, and proving them to be, extortioners and swindlers, is blaming them: — blamed by him were system and men together; and thus freely, his eyes not being sharp enough to descry any such necessity as that which, to the noble and learned eyes, is thus manifest. Could they even have prevailed upon themselves to abstain from this mode of *swindling*, there would still have remained to them the faculty of increasing their emoluments *ad infinitum*, as above; there would have still remained to them, for example, the faculty of effecting the extortion of the sum of £570, in payment of a man's name put by him to a paper without looking at it; an extortion, the fruit of which is continued to be fed upon in full security.

Swindling? Yes; *swindling*; that is to say, "obtaining money" (as the statute words it) by *false pretences*: pretence *here*, that of having done this or that piece of business, which, in fact, had not been done: *attendance*, for example, averred to have been paid, at a time when no such attendance was paid — no such business, nor any business at all, on the occasion of or in relation to the suit in question, was, by the functionary in question, done. Before the public, ever since the year 1802 — before the public, now for these twenty years, has been a work, in which this abomination is painted in its appropriate colours. *Desert* is a term, in relation to which I have on several occasions observed, that though it is with propriety coupled with *reward*, it is not with propriety coupled with punishment: if, however, it be assumed to be properly coupled with punishment, punishment has been still more richly *deserved* by every man by whom that office has been occupied, than by any other sort of man to whom, in speaking of him, the appellative of *swindler* was ever applied: the swindler — a malefactor to whom, by the so-often-referred-to statute, punishment by fine, imprisonment, pillory, whipping, or transportation, was applied; — those several punishments, one or more of them, at the option and discretion of the judge.

Thus then stands the matter. *Disease*, a complicated case — extortion coupled with swindling. Remedy, as prescribed by the noble and learned doctor, *powder-of-post*.

Well: no longer (suppose) by the clerk are they taken, those same fees — no longer by the *clerk*; but according to prescription (prescription by the noble and learned doctor) by the *Master*. Good: and what then? Why — that in the course in question they will keep going on — these same Masters: these same Masters, with their "*high character*," and in their "high station;" going on, as they did in 1811, and have done ever since, unless by any very recent arrangement, unknown to me, it has happened to them to be stopped.

† £8000 *a-year.*] Whence this same sum of £7000 or £8000 a-year is to come, is what I am utterly at a loss to conceive.

Among the House of Commons papers of the last session is one numbered 314 — date of the

ments: *his emoluments arising from bankruptcy* amounted to the sum of £7000 or £8000 a-year, every farthing of which will be cut off by the bill I am about to introduce."

What has been seen, belongs to the account of *regularly* received benefits. Now as to the sort of benefit *casually* received, in the shape of *patronage*.

22d February 1831, *Mirror*, p. 417.—"First of all, there will be an *immense reduction of official patronage*; the scheme will convert *seventy* places, at present in the gift of the great seal, into *ten*."

Page 418.—"But, if *twelve* be not too many—and they have to examine evidence, and perform many other important duties—and if *two Masters** ought to be added, we shall cut off *seventy offices*, and have an increase of *eleven*. We shall cut off seventy *small* offices, and we shall have a *remainder* of eleven large ones.

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order for printing, 8th October 1831—intituled "BANKRUPTCY FEES. No. 2. An account of all sums of money paid by the clerk of the Hanaper to the Lord High Chancellor, in each of the three last years."

"The Lord High Chancellor," it goes on to say, "receives from the Hanaper office certain payments and allowance under his Lordship's patents, which amount in each year to the unvarying sum of £1096 19 0

"Deduct Hanaper fees, . . . 10 19 6

"Net sum paid to the Chancellor, £1085 19 6"

Lost am I here in astonishment!

This same sum of £1089 : 19 : 6,—is it not the whole amount of the emolument which in a return called for by the House of Commons, is stated as being derived from the source in question—the bankruptcy business? This the amount really given up by his Lordship, and by his said Lordship £8000, or at the least £7000 a-year, asserted to be the amount given up by him? an error, on such an occasion, to such an amount, and in such a proportion? and this in a matter to which his attention had thus pointedly been called for and directed?

Can it have been of anything less than the whole of the emolument derived from that source that this order calls for, and accordingly the return obtained by it contains, the statement? True it is, that the *Hanaper office* is the only source from which the information is called for; but, had there been any other such sources, would not they have been, all of them, included in the order, and consequently in the returns? Of any such order, what could be the object?—what other than the ascertaining and bringing to light the whole of what the office filled by this high functionary was deriving from this part of the business of it? This—is it a sort of matter that could either have escaped his notice or his memory?

For the sake of round numbers, or from the hurry of debate, an error of a few per cent.? Yes: but an error of 6 or 7 hundred per cent.? an error of such magnitude in the conception entertained by a man of his own income? Not less distinguished for the liveliness of his imagination, than for so many other brilliant accomplishments, is the noble and learned Lord: but an imagination that could carry a man thus far above the truth—is it not strong enough to carry him aloft upon the wings of it, till, as Horace in a certain case looked to do, he ran bump against the starry firmament?[a]

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[a] Apprehensive of the guilt of misrepresentation and injustice, I have hunted out a report made in a former year—a report having for its subject-matter the aggregate of the emoluments received by the Lord Chancellor, in the chancellorship of Lord Eldon. In it I find what follows: date of order for printing, 12th April 1827; No. 265; general title, "Bankrupt Fees. Returns and account of receipt and appropriation of fees in bankruptcy." Particular account, pp. 12 to 17, both inclusive:—"3. An account of *all* fees received by the Lord Chancellor's pursebearer, from *the* different branches of bankruptcy business, in each year from 1811 to 1826; distinguishing the specific appropriation thereof."

In page 12, at the end of the account of the first of these years, namely the year from "April 1811 to April 1812," comes a statement in these words and figures:—

	£	s.	d.
"Total received for the Lord Chancellor, subject to the deductions of a proportion of the salary allowed by his Lordship to his purse-bearer, which, according to the amount of other business, in the purse-bearer's account, is	933	16	6
	250	0	0
	683	16	6"

In page 16—in these same annual accounts, the year in which the mass of emolument is at its *minimum*, is the year intituled April 1824 to April 1825; and in that year it stands thus:— £651 0 6

Deductions as before stated, . 250 0 0

£401 0 6

In page 17—in these same accounts, the year in which the mass of emolument is at its *maximum*, is the year intituled April 1826 to April 1827; and in that year it stands thus:— £1390 14 0

Deductions as before stated, . 280 0 0

£1110 14 0

N. B. The substitution of this £280 to the preceding £250 wears the appearance of a clerical error.

Amount of this emolument upon an average of the two years, ... £755 10 3

Whether, by this last account, my astonishment can have been lessened, the reader will judge: for, on adverting to it, the amount declared in proof of disinterestedness, turns out to be, instead of the 5 or 6 times, about 10 times as great as the real amount. At the time of this speech of his Lordship's, at the making of which the magnifying glass through which he looked at the sum, had swollen it to the £7000 or £8000 a-year, the average was no more than this same £755 : 10 : 3. As to the £1085 : 11 : 6, which was the amount of it in the year 1831, he could not, at that time, have known anything of it, unless he had himself caused it to be taken, and had it before him in manuscript.

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* *Two Masters.*] This bears reference to another job, which seems to have been abandoned.

"Your Lordships will not suppose that these two descriptions of offices are the same; for a *man who delights in patronage*, who wishes to indulge *kindly feelings*, *seventy small offices* are much more *convenient** than *eleven large ones*. He can give away the seventy small ones among his friends; he can oblige † a colleague with one; but he cannot, he dares not, make a judge of a man who is *incompetent*;‡ he dares not go himself into a court, over which he has placed an unfit person.

"At present, the persons who are made judges are not made by favour; they are not obliged by the choice, and God forbid that they should hold their office by any other title.

"Thus, by this arrangement, seventy places are lopped off from the patronage of one of the ministers of the crown. Great diminution will also take place in other departments of the court, in addition to those which I have named; but, wishing to understate the advantages of the plan, rather than indulge in any exaggeration, I omit them for the present. By my propositions, delay will be abridged, decisions improved in quality, and their dispatch promoted, and expense will be considerably lessened, going even upon the bare supposition that nothing finds its way into the pockets of suitors, except the saving resulting from the abolition of fees."

22d February 1831, *Mirror*, p. 418.—"It is quite clear that these parties, who are compelled to contribute the heavy expenses which arise out of chancery suits, are the last persons whose interests, as connected with the pecuniary cost of legal proceeding, has been yet consulted. The total saving in one branch of the bankrupt department will be £6000 a-year; the expenditure in the office of *secretary of bankrupts* being reduced from £9000 to £3000, and the whole reduction, in all departments connected with bankrupt affairs, after due provision for the new court, amounts to £26,000* a-year *net saving of fees to suitors.*"

22d February 1831, *Mirror*, p. 419.—"But it may be said—Oh! you are taking great pains to reform the expenditure of this court, but you are taking excellent care to keep the chancellorship to yourself, for nobody competent to fill the office will take it, with the reductions you have made in it.

"Very well: but is it to be supposed that I should have consented to give up the money arising from my professional exertions, and consent to support the burthen of the peerage, if I was not to take some fair chance of compensation? My Lords, I could not afford to do it. . . . . .

"Permit me, however, to add, my Lords, first and last, once and for all, that if I suggested any increase of the emoluments of the Great Seal, I would rather add to the retiring pension † of the Lord Chancellor, than I would augment his working salary."

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* *Convenient.*] A convenient word this same word *convenient*. Where the purpose is deception, proportioned to its obscurity or ambiguity is the convenience of the diction employed in speaking of it. Pride, on this occasion,—the pride of the candidate—speaks more plainly. Where the emolument attached to the situation bears so small a proportion to the value of the time and labour necessary to the performance of the duties of it, and at the same time affording the minimum of the provision capable of enabling a man to keep up an appearance suitable to his station in society, without affording wherewithal to support a family, in such sort that the gift of it would scarcely be regarded as a favour, it will not sell for anything; where it rises to a certain elevation, it will fetch as much as an annuity, clear of all burthen in the shape of service. Of a living, the income of which is not greater than that of a curacy, the advowson will not sell for anything: while, of a living which is rich to a certain amount, the advowson has been known to sell for as much as 14 years' purchase. In military offices, moreover, the like proportion has place. An ensigncy of foot, pay 5*s.* 3*d.* a-day, sells for no more than £450; while of a lieutenant-colonelcy, pay 17*s.* a-day, no more than about three times as much as that of the ensign, the regulation price is £4500—ten times as much. The increment added by this circumstance to what his Lordship, with his disinterestedness, gains by the change, might be proved and expressed in figures, were it worth while. Source of these statements, information obtained from an official accountant.

† *Oblige.*] By his commissionerships of £1500 a-year, his judgeships of £2000 a-year, and his chief judgeships of £3000 a-year, his Lordship can "oblige" persons so high in rank, influence, and capacity of *obliging* him, that they would not have accepted of any of the abolished commissionerships, with their three or four hundred a-year.

‡ *Incompetent.*] Howsoever, in this respect, the case may be with a hypothetical Lord Chancellor, in regard to an actual one, if in what I have heard from various quarters there be anything in any degree well grounded, the case is in no inconsiderable degree different. Of the four judges, against one in particular the outcry, on the score of inaptitude, is, if I am not egregiously misinformed, loud and extensive.

* £26,000.] As to this sum, evidence other than as above, none: and of the *new* fees established, unbounded and ever increasable as is the amount of them, nothing said. For the real amount, see below.

† *Retiring pension.*] The more rapidly the lord high jobber drives on his course with his learned job-horses, the nearer will be the thus contemplated fall of this modern Phæton upon his bed of down—the retiring pension,—and the greater the importance of any addition made to it.

When the service of fighting and subduing their opposition Lordships has been accomplished, the unpopularity which, by that time, will have thickened round him, will have impressed his colleagues in the cabinet with the necessity

14th October 1831, *Mirror*, p. 3053. — "The Lord Chancellor..... I cannot help observing, that I have heard with really great concern, that some *imputations* — I will not say imputations, for I hope I may consider myself above imputations, — but that some *cavils* * have been raised, *out of the House*, with respect to my *motives* in bringing forward this bill; and I regret the more sincerely that such *cavils* should have been raised, because they have been entertained by persons for whom I am bound to pay every respect, and particularly by *one* person — a gentleman of great learning, a personal friend of mine, — a man of extraordinary learning; the father of the English Bar, and the father of law reform.

"And he says, that the *anxiety* which I have evinced (and which I still feel) to pass this important measure, looks as if I were snatching at a patronage of £26,000 a-year, besides the patronage of the Great Seal.

"But this apprehension of my excellent friend arises, I must say, from a *total ignorance of my nature*, and I will add, too, of the *provisions of this bill*.† *I have only substituted for a patronage of* £35,000 *a-year, one of* £18,000.‡ In addition to this, *I have surrendered the patronage of two sinecure places of* £12,000 *or* £14,000‖ *per annum*; so that, *by the operation of this bill, there is a great diminution of the patronage and advantages now belonging to the Keeper of the Great Seal.*"

Now again for a battle — a second battle — between the principle of *single-seatedness* and that of *many-seatedness*. Scene of action, the *commissioners'* court: problem to be solved — in what cases, or say on the occasion of what *sorts of business*, is employment by this bill given to commissioners acting singly — in what other cases, or on the occasion of what other sorts of business, is employment given to commissioners in numbers greater than one, — that is to say, two to six inclusive. Sections on this occasion to be looked to, in the first edition, § 6, 7: so likewise in the second edition, in which they are the same, word for word.

1. Look at § 6. "The said six commissioners," it says, "may be formed into two subdivision courts, consisting of three commissioners for each court:" after that, it says, "and all references *or* adjournments (meaning probably *and* adjournments) by *a single* commissioner to a subdivision court, by virtue of this act, shall be to the subdivision court to which he belongs, unless," &c.

Here, if only by implication, at any rate beyond doubt, we have a single-seated court authorized.

2. Look now at § 7. "In every bankruptcy prosecuted in the said court of bankruptcy, it shall.... be lawful," it says, "for any *one* or more of the said six commissioners" to do so and so: "Provided always, that no *single* commissioner shall have power to commit," &c. "otherwise than," &c.

Here, then, we see authorized single-seatedness, double-seatedness, treble-seatedness, quadruple-seatedness, quintuple-seatedness,

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of giving him his quietus, and consigning him to his thus anticipated retirement. The sense entertained of the retardation opposed to parliamentary reform by the job here in question, can scarcely have failed to hold up to the view of the public, in the proper colours, the expediency of such a measure.

* *Cavils.*] By *cavils*, seems to be commonly understood ungrounded and groundless censure. How far it is in the present case applicable, the reader will already have been in some measure enabled to judge.

† *Ignorance of this bill.*] If, for the provisions of this bill, anything like an apology be to be found, the reader will judge whether an ignorance of the substance, qualities, and probable effects of it, on the part of all concerned in the drawing of it, but more especially of the noble and learned draughtsman at the head of them, will not constitute the least bad apology that can be found for it. Another point on which the reader is hereby requested to pronounce judgment, is — whether, to the removal of that same ignorance, some contribution has not been made by him, to whom this "total ignorance" is thus imputed.

In this same request may also be included the article of "*motives*" By a man who is not in the habit of looking into his own mind, the motives from which his conduct derives its direction are frequently not so correctly or comprehensively understood as by by-standers. In these observations, if his Lordship will be pleased to continue his researches in this view, he may perhaps find a sort of microscope by which that operation will be more or less facilitated.

‡ £35,000—£18,000.] Whether in these figures there be not some considerable errors of the press or of the pen, is another point on which the reader will presently be in a condition to pass judgment.

‖ £12,000—£14,000.] Magnificent indeed is the show made by these figures. But this large cob-nut has been cracked, and the kernel has been found wanting. I could not but suspect as much; and, by a publication which has made its appearance while these pages were writing, this suspicion has been pretty well confirmed: [a] from which the true value appears to be = 0: to which, perhaps, may be substituted x; if x be taken for a very small number.

As to the above acknowledgments, the candour and good feeling displayed by them is such as would be matter of astonishment from any person but the best good-tempered and good-humoured man that was ever seen in that high office, not to speak of any other: but, intimation has been already given, that somehow or other so it happens, in such sort is my stomach constituted, that not even in this shape of such trebly refined sugar, can anything in which the taste of a bribe is perceptible be swallowed by it.

[a] *Legal Observer*, October 22, 1831. p. 336.

and sextuple-seatedness: six different courts for the more effectual exclusion of "uncertainty," as promised in the preamble.

3. Look now at § 13. "Every fiat prosecuted in the said court of bankruptcy shall be filed," it says, "and entered of record in the said court, and shall thenceforth be a record of the said court: and it shall thereupon be lawful for *any one or more of the commissioners* thereof,"—(namely, of the court of bankruptcy, in which are these six commissioners, it seems, as well as the four judges)—"to proceed thereon in all respects as commissioners acting in the execution of a commission of bankrupt, save and except as such proceeding may be altered by virtue of this act."*

4. Look to § 20. "It shall be lawful," says the bill, "for *any* commissioner who shall make any adjudication of bankruptcy, to appoint two or more meetings instead of the three meetings directed by the said recited act,† for the bankrupt to surrender and conform, the last of which said meetings shall be in the forty-second day by the said act limited for his surrender.‡

5. Look to § 21. "In all cases," says the bill, "in which power is by this act given to *any one* of the said commissioners to act, such power may . . . . be exercised by the said chief judge, or by any one of the said other judges: and where any such judge so acting would, in case he were a commissioner,* make any reference or adjournment to a subdivision court, such reference or adjournment shall be made by such judge to the court of review, instead of to a subdivision court."

Here again may be seen single-seatedness; single-seatedness mentioned, many-seatedness not.

6. Look to § 22. Place and words the same in both editions. Subject-matter, official assignees. Here again may be seen, it is true, *many-seatedness* in all its nine degrees; but not the less true is it, that so also may be seen *single-seatedness*. "The proceeds in question," the bill says, "shall . . . . be possessed and received" (possessed before they are received) "by such official assignee alone, save where it shall be otherwise directed by the said court of bankruptcy, or any judge or commissioner thereof."†

* *This act.*] Yes: according to this act, at one and the same time, in relation to one and the same supposed act of bankruptcy, in two different justice-chambers, by two different sets of judges, the one subordinate to the other, one and the same set of proceedings is thus to be carried on; and these same proceedings are (it seems) to be *filed*, &c. in the office belonging to one of those same sets of judges — namely, the four judges of the court of bankruptcy — in that office alone; and thereupon "any one or more of the commissioners *thereof*," namely, of the said court of bankruptcy, of and in which, in one sense of the words *court of bankruptcy*, there are four judges, and no one commissioner; in another sense of those same words, there are also at the same time commissioners in any number not exceeding six, as also in the several numbers two, three, four, five, and six, who are "to proceed thereon," (says the bill and the act) and so forth as above.

Could any exercise be better imagined for the purpose of being translated into Latin verse for the instruction of Westminster school-boys in the art of poetry, as above proposed?

This, however, is an episode. Be this as it may, here again we have (it is true) many-seatedness in all its five forms: the said commissioners, whatsoever be the number of them, sitting in the laps of the four judges; of the said four judges, the three puisnes saying they are "*of the same opinion*" with the chief, and all four singing to the commissioner or commissioners, "Lullaby, baby."

† Note that, in neither edition of this bill, is there any such or any other act recited.

‡ In the second edition also, this same section stands twentieth, and is, without variation, in the same words. Here then we have a commissioner acting under the direction of an act which has no existence: much good may it do him; not to speak of the suitors. Here, and without doubt, we have single-seatedness: Yes—and *here* in all its simplicity and purity.

* Question here for argument: Judge, either the judge whose proceedings in the imagined case are to be guessed at, or some other and what judge or judges: question, what the said judge would do were he a commissioner? Not that, in this imagined case, there is anything of inconsistency or impossibility: for, though, as above, every commissioner is a judge, it is not true that every judge is a commissioner.

Be this as it may, here we have a most ample recognition of the principle of single-seatedness. Not only six justice-chambers do we see with a *commissioner* in each, but *four* other justice-chambers with a *judge* in each.

† Now suppose a different direction given by each of any two, or by every one of all these *ten* members of the court of bankruptcy — namely, the four judges who are not commissioners, and the six commissioners who are, and are not judges. What is to be the consequence? The unhappy wight — the official assignee — should he be, as he may be, pulled at the same time ten different ways, what is to become of him? Still greater would be his embarrassment than that of *Garrick* between *Tragedy* and *Comedy*, or *Hercules* in the print between *Venus* and *Minerva*: more nearly resembling would his condition be to that of a French traitor under the *ancien régime*, when pulled four opposite ways by so many wild horses.

After this, in this same section, comes a clause speaking of "such rule and regulation . . . . as the Lord Chancellor, or the said court of review, or any judge of the said court of bankruptcy, if authorized so to do by any general order of the same court." As to this same *if*, is it to both the subject-matters immediately preceding — namely, the court of review, or any judge of the said court of bankruptcy — or to the last of them alone, that it is to be understood to bear reference? Here likewise we have a recited act, a said recited act, which is not anywhere recited: so much the better for the official assignee, who, if it were re-

7. Look to § 30. "Any *one* of the six commissioners may," says the bill, "*adjourn* the examinations of any bankrupt or other person, to be taken either before a subdivision court or the court of review, or, if need be, *before both courts in succession* . . . . and may likewise adjourn the examination of a proof of debt, to be heard before a subdivision court; which said court shall proceed with such last-mentioned examination."*

After that, in this same section, comes a proviso, "that in case, before the said commissioner or subdivision court, both parties . . . . consent to have the validity of any debt in dispute tried by a jury," (which, by the bye, they will not do, unless they are egregiously misadvised,) "an issue shall be prepared, under the direction of the said commissioner or subdivision court, and sent for trial before the chief judge or one or more of the other judges; and if one party only applies for such issue, the said commissioner or subdivision court shall decide whether or not such trial shall be had, subject to an appeal as to such decision to the court of review."†

Before this fruitful section is dismissed, another rather singular provision in it must not be left unnoticed. Not content with authorizing and requiring the judge or judges in question to "*adjourn*," or say transfer, the matter in question to a judicatory, at his or their discretion; it authorizes and requires them respectively to do this favour to two judicatories in *succession*, one after another; thus producing the effect of an *appeal*, whether the parties, or any one of them, is desirous of it or no; in other words, although

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cited, might have to be charged with *interest*, with which, as the matter stands, he cannot be charged: and which, accordingly, the fault will be his if he does not pocket.

Note, moreover, that on this occasion the words are not, as elsewhere, *rules* and *regulations* in the plural, but rule and regulation in the singular: and thus it stands, not only in the first edition, but in the second also; and that, after revision made. Now then, as to this one *rule* and *regulation*. Suppose it made by a single judge of the court of review, what rule and regulation is there, power for the making of which is left either to the court of review in its *integrality* (*integrality*, not *integrity*) or the Lord Chancellor? And suppose that, by *every one*, or even any one of these functionaries, the one rule and regulation thus authorized has been made, what power is there left for the eventual amendment of it—for the amendment of it, whether in the way of subtraction, addition, or substitution? By the first exercise given to it, will not this same power be exhausted?

Moreover, as to these *rules* and *regulations*, when they are in the plural, what is to be done with them? According to § 1, they are to be "*established*;" according to § 11, they are to be *made*: according to § 22, rules are to be *made* (doing as well as they can without either *regulations* or *orders*;) according to § 34, "Rules and orders are to be *made* and *directed*:" and thus it stands in both editions: *they* are to be made, that is to say, in this section "*rules and orders*," by which (it seems but fair to presume) is meant the same thing with what (as above) is, in other places, meant by "*rules and regulations*."

Whatever thing it is you mean, how many times soever in the same portion of discourse you have occasion to mention it, be sure never to employ the same locution in the designation of it. A rule to this effect, though the observance of it has never yet been made obligatory by the positive enactment of a law of *parliament*, has, of late days, been made little less effectually obligatory by a law of *fashion*. In a speech spoken, or a paragraph in a periodical, it serves not any more important purpose than that of ornament. But, when conformed to in and by an act of parliament, it is of more substantial use; for, whatsoever be the number of times at which this decoration is employed, the same is the number of grounds on each of which a lawsuit may be erected, and appropriate remuneration for learned industry and ingenuity administered.

As to rules, regulations, and directions, rules and regulations are in use to be *made*, as also to be *established*; nor are they altogether unaccustomed to *direct*, and in this way to be *active*: but as to the being *directed*, and accordingly passive, *facts* (says the common aphorism) are *stubborn* things; and it seems questionable whether the like stubbornness may not be apprehended at the hands of *rules* and *regulations*.

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* Here again the already-mentioned difficulty re-exhibits itself: this same operation, whatsoever it be, any *one* of these five commissioners (all of them at the same time members of the court of bankruptcy) may perform,—whatever may be done by the two, three, four, or five others to prevent it. As to *adjournment*: by *adjourn*, the learned draughtsman means (it may be presumed) *transfer*: the occasion on which *adjourn* is the term commonly employed, is when, the body being the same, the transference is of that same body to a meeting at another *time*, and at the same *place* or another *place*. But, for aught I know, precedents of employment given in this sense to the verb *to adjourn*, may have met the learned draughtsman's eye.

† Thus far the bill: so that, *inter alia*, should the question, such as it is, be decided upon, in the first instance, by the said three other judges, the appeal against such decision of these *same other* judges may be heard by these same other judges, sitting under the name of *the court of review*. The appeal will be from themselves to themselves, and will accordingly be heard by themselves.

In the law of procedure, in this provision, a new improvement, à la Brougham, is exhibited. An appeal from the Lord Chancellor to the House of Lords has long been understood to be (accident excepted) an appeal from his noble and learned Lordship in one place, to his said noble and learned Lordship in another place; but, how effectually soever *produced*, this mode of obviating *uncertainty*, though not without some relatively beneficial addition to *expense* and *delay*, has (it is believed) been authorized and established by act of parliament. It may accordingly be considered as an addition made to the list of the improvements, made or meditated by the noble and learned author of this bill, in the fabric of the law.

it be against the desires of all parties interested:—"Any one of the said six commissioners," says the bill, as we have seen, "may adjourn the examination of any bankrupt or other person, to be taken either before a subdivision court or the court of review, or if need be, *before both courts in succession*, and may likewise adjourn the examination of a proof of debt to be heard before a subdivision court."*

8. Look to § 31. "If *such commissioner*† or subdivision court," says the bill, "shall determine any point of law or matter of equity, or decide on the refusal or admittance of evidence in the case of any disputed debt, such matter may be brought under review of the court of review by the party who thinks himself aggrieved, and the proof of the debt shall be suspended until such appeal shall be disposed of, and a sum not exceeding any expected dividend or dividends on the debt in dispute in such proof, may be set apart in the hands of the said accountant-general, until such decision be made; and in like manner there may be an appeal on the like matter of law or equity from the court of review to the Lord Chancellor."‡

9. Look lastly to § 32. In and by this section, the crown may be seen put upon the aptitude of *single*-seatedness; and not absolutely and merely is its aptitude recognised, but also the comparative superiority of its aptitude, in comparison of *triple*-seatedness and *quadruple*-seatedness. Look on till you come to the words "*one commissioner*," and then observe the feats which his commissionership is rendered capable of performing.‖

* Thus far the bill: a curious enough document would be the *formula* by which this appeal, without the name of an appeal—this appeal *in disguise* — this *quasi-appeal*, as it may be termed, — is ordered to be made; its place would be among the rules and regulations, or say rules and orders, so often spoken of.

Thus it is, that here again we have *single-seatedness*: and of the six commissioners, each one is, if he think fit so to do, issuing a different decree; making, on one and the same occasion, on one and the same point, in any number as far as six, different decrees, each of them contradictory to every other; on the supposition that, to this act, and to this clause in it, the execution called for by it is given accordingly: so that, should the money, say £50, be by commissioner A adjudged to Thomas Noakes, by commissioner B to John Stiles, by commissioner C to John Doe, by commissioner D to Richard Roe, and so forth, then, and in such case, the said Noakes, Stiles, Doe, and Roe, &c. will receive, each of them, the said sum of £50 to his own proper use.

To the quantity of the mass of *argumentation* capable of being extracted from this one section — to the quantity of *time* the said argumentation may be made to occupy—to the quantity of *money* it may be made to pump up out of the fund lodged in the hands of the assignees, official and non-official — to the *profit* capable of being extracted out of the said money, in the shape of remuneration for the services of learned judges, learned commissioners, and learned gentlemen, — who shall assign any limits, other than those of the said fund itself? — all for the more effectual minimization of *expense*, *delay*, and *uncertainty*, in fulfilment of the *promise* made in the preamble.

Note, moreover, that by the words of this clause, when the learned persons in question, be they who they may, adjourn the examination of any bankrupt or other person, he or they are to proceed — not with *that same* examination, but with the examination of a different matter; namely, *a proof of debt*.—Such is the mode of proceeding, for the carrying on of which the learned draughtsman has made provision, and with an anxiety the tokens of which are upon the face of the passage so conspicuous.

† Here again may be seen *single-seatedness*: witness "*such commissioner*."

‡ Note how in this section (which follows immediately upon the last-mentioned one,) lest the quantity of this pre-eminently necessary remuneration should not yet be sufficient, provision is made for *two* appeals: two appeals, one above another, — Ossa upon Pelion; namely, one from any or all of the six judicatories just indicated, appeal to the *court of review*: the other from the court of review to the *Lord Chancellor*: but, rich indeed must be the fund, if, after having been drawn upon by these drains which we have been seeing, there remain any very considerable pickings for his said Lordship, and his immediate subordinates, in his Court of Chancery.

‖ Appeals may, moreover, here be seen mounted one upon another in a pile, by which the tower of *Babel* will naturally be made to present itself to the mind of any person who has ever seen the elevation of it upon a Dutch tile.

"If the court of review," says the bill, "shall determine in any appeal touching any decision in matter of law upon the whole merits of any proof of debt, then the order of the said court shall finally determine the question as to the said proof." Having gone thus far, a debtor or creditor by whom the bill were perusing, would naturally expect and hope to find the course of plunderage at an end. Vain, alas! the expectation; for now comes in the pile of *appeals*, introduced by an *unless*: "unless," continues the bill, "unless an appeal to the Lord Chancellor be lodged within one month from such determination:" this month being interposed for the more effectual fulfilment of the promised minimization of delay and uncertainty. But, alas, once more! this is but the beginning of sorrows; for, "and in case of such appeal," continues the bill, "the determination of the Lord Chancellor thereupon shall in like manner be final touching such proof; but if the appeal either to the court of Review or the Lord Chancellor shall relate only to the admission or refusal of evidence, then and in that case the proof of the debt shall be again heard by the *commissioners* or sub-division court, and the said evidence shall be then admitted or rejected according to the determination of the court of review or the Lord Chancellor." Here the section ends.

Here, then, in the character of a security, an additional security, against misdecision, is assumed the propriety of an appeal from the Lord Chancellor; yea, even from the Lord Chancellor to a commission; to *any one* of the six commissioners, at the choice and pleasure of the party, or of *chance*, as it may happen. But, if expense,

10. Look to § 40. No — the last preceding was *not* — this *is* — the concluding article: — the article by which a close is put to the list of the proofs given of the virtual recognition which, by the noble and learned advocate of *many-seatedness*, has thus been virtually made

delay, and uncertainty, be put out of consideration (and more completely put out of consideration they can scarcely be than they are in and by the whole tenor of this bill,) security (it must be admitted) can never be too secure. Here, then, is this same scale or pile of appeals, at the pleasure of any *one* of the parties (and, in particular, of any one of them whose plan it was to gain his point by exhausting the matter of fees from the pockets of the rest,) reproduced; and *this*, not once only, but *toties quoties*, till the exhaustion is completed; and thus may the original *repetend* be improved into a *circulate*, and, for the benefit of the learned, useful application thus made of mathematics to jurisprudence: and the tower of Babel turned, *toties quoties*, topsy-turvy, and then set right again, as in the case of an *hour-glass* with sand in it — an hour-glass, that formerly useful implement, so much prized by the wisdom of our ancestors, now so extensively supplanted by clocks and watches.

With incontestible propriety may these same *appeals in disguise*, alias *quasi-appeals*, be thus put upon a level with *appeals* commonly so called. Why so? For this plain reason: because in point of expense and delay, no difference is there between the one case and the other; and so long as the quantity of *money* taken out of the pockets of suitors is the same, and the quantity of *time* wasted is the same, what matters it what the name is which is given to the legal *operation* or *instrument* by which the evil is produced? the effect being the same, what matters it what the name is which is given to the cause?

Now then for the *scale*, or say *pile*, of appeals — these same appeals so called, and appeals not so called, put together. For shortness, let the name of appeal be given to each one of them.

1. Appeal the first we have had already; namely, by section 31 — Appeal from "such commissioner or subdivision court" to "the court of review."

2. Appeal the second (by sections 31 and 32) — from the court of review to the Lord Chancellor.

3. Appeal the third (an appeal in disguise) — Appeal from the Lord Chancellor to the commissioner (the *single-seated* commissioner) or subdivision court, by whom or which "the proof of the debt," says the bill, shall be *again* heard.

4. Appeal the fourth (another disguised appeal) — Appeal from the commissioner or the court of review, to that same court of review. Appeal, *ab eodem ad eundem*, as above noticed.

5. Appeal the fifth (another disguised appeal, disguised under the same cloak as appeal the fourth) — from the court of review to the Lord Chancellor.

6. As yet we have but five appeals *declared*, or say appeals *patent*; but a sixth disguised appeal, or say an appeal *latent*, if not a *seventh*, may be discovered in the words "*commissioner or subdivision court*;" for, in a former section, namely the sixth, may be seen established an appeal from every single-seated commissioner to a subdivision court; and, in another, namely section the third, from every subdivision court to the court of review, from whence, as above, lies the appeal to the Lord Chancellor.

of the aptitude — not to say the superior aptitude — of *single-seatedness*. After what has just been seen, this progress (it must be acknowledged) is but an anticlimax: but the list — the whole list — having been undertaken to be given, will naturally have been expected to be seen, and without production of disappointment could not be left uncompleted.

This section has for its subject-matter the case where a bankruptcy, being by the act found lying under the cognizance of the existing commissioners, is transferred to that of the five new courts now instituted. To the six commissioners, each of them singly-seated, are (it will be seen) in and by this section, given the two powers following: —1. Power the first — "power to appoint," says the bill "some one of the aforesaid official assignees to act with the existing assignees;" 2. Power the second — "power to direct," says the bill, "the existing assignees to pay and deliver over to such official assignees" (in the plural) "all monies, &c." Thus far the bill. But *direction* is one thing, *compliance* is another thing; and suppose that in consequence of such direction compliance has not place, what then is to be the result? *Answer:* Exactly that which for the remuneration of learned labour is to be desired. *Motion* will have to be made in the appropriate court, say the *single-seated* commissioner's court — motion to *show cause* why the said monies, &c. are not so paid and delivered over: which motion, being there decided upon, may or may not be carried upwards, or upwards and downwards, into the scale or pile of *appeals* above delineated; and thus it is, that to that pile which can never be too high — namely, the pile of remuneration for the services and merits of noble and learned lords and gentlemen — a correspondent addition will be made.

As it is with Hogarth's prints, so have I found it with this, if not inimitable, let us hope never-about-to-be-imitated bill: look as often as you will — look again — new interesting objects will you find in it: till this day (October the 19th,) not more than five judicatories had I observed to have been established by the bill, in lieu of the two which it found in existence. On looking into a section which had escaped me, — namely, section 5th, I find by it another judicatory added; namely, that of a Master in Chancery: Yes, that of a Master in Chancery; and so far so good. But does the matter end there? Oh no: for, from the decision of his Mastership lies of course a virtual appeal, — under the name of *exceptions* to his report, — either immediately or through the medium of the Vice-Chancellor, to the Lord High Chancellor in his quality of Supreme Judge (save and except the House of Lords) in matters of equity; so that thus we have not one only,

but three more stages of appeal. "All costs of suit," says § 5, "between party and party in the said court of review shall be at the discretion of the court, and shall be taxed by one of the Masters of the Court of Chancery." All costs of suit? and to the sum of these sweet things, what limit is there that can be assigned? By the blessing of God upon learned industry, to thousands of pounds in any number may these same costs be made to amount: and out of the stakes constituted by the bankrupt's assets, and played for, as a pool of fish at *Pope Joan*, by noble and learned lords and gentlemen — out of this fund and no other shall these costs be taken? *Semble que non:* and if not, then by the creditors, in lieu of the so much in the pound to be *received*, comes so much to be *paid*.

So much as to everything that has any immediate application to the particular matter here in question; that is to say, to the merits and demerits of the bill, now passed into an act. But, in the course of this inquiry, has unavoidably been started another question — no less than whether, under the present head of the law, as between *melioration* and *deterioration* of the whole mass taken together, deterioration is not of these two opposite results unhappily the most probable. Now then, important as is the principal question, still more so (as everybody sees) — incalculably more so — is this collateral one. To him, so long as he continues in that highest of all high law situations — to him belongs, so far at least as concerns *prevention*, the attribute of omnipotence. Without his concurrence — or at least permission — for no melioration, to any considerable extent, can be seen any chance: for no melioration worth mentioning, much less for an all-comprehensive one.

Of any beneficial effect, the production, so far as it depends upon him, depends upon the conjunct existence of two states of mind — *inclination* and *ability:* and, if inclination be absent, *ability* — all the ability imaginable — will be of no use. If it be by an interest opposite to that of the community that his conduct is guided, inclination will be — not on *that*, but on the opposite, side. Disinterestedness, as the word is commonly understood, is the quality, not of him whose conduct is not determined by any interest (for that would be a mariner whose vessel never sails but in a calm,) but of him who, on the occasion in question, is *not* under the guidance of any interest opposite to that of the community at large: to the possession of this quality he has been, and will be seen to be, laying claim: as the old law phrase is, *continual claim*. Into the validity of this claim, the inquiry now continues itself. By himself — by any one for him — will this contestation be complained of? He has himself to thank for it. By him has the gauntlet been thrown down: by this inquiry it is not thrown down, but taken up.

So much for inclination. What, now, if the other requisite — ability — be wanting likewise? As to this, some judgment the reader is prepared to form already; meaning, always, *appropriate* ability: for, as to oratorical talent, supposing *inclination* opposite, so far from being the better, law reform would be all the worse for it.

To return to *inclination*. Of what, in the shape of patronage, his Lordship has given up, and, *per contra*, of what he has gained, mention has not, in any other than general terms, been thus far seen made. Now for particulars.

In the customary order, *profit* comes before *loss:* but, in the present case, the most suitable order is — loss before profit.

Here follows the account: —

*Patronage given up, as follows:**—

1. Commissionerships, 70.
2. Average annual emolument of each, £360
3. Average number of vacancies every year,† 4
4. Hence, average value of the whole number of the incomes, the right of appointment to, or say in one word, the patronage of which, is given up, — that is to say, the value in the hands of a man who has it in perpetuity, . . . £1520
5. Average number of years' continuance of the same man in the Chancellorship, 8.‡
6. Years' purchase, which an annuity for eight years is worth, between 6 and 7; for round numbers and ready calculation, say ‖ . , 7

   Six and a half would be more correct; but, the thus assumed number 7, being the same on both sides, the difference will not be material.
7. Hence, total value of the patronage given up, ... £10,640 — this being the average value of the four salaries, namely, the above £1520, multiplied by the number of years during which, according to the above-mentioned calculation, the right of appointment may be expected to remain in the same hands.

Per contra . . . . . Patronage gained, as under: —

1. New functionaries, 23.
2. Aggregate of their salaries,¶ £26,400
3. Average number of vacancies every year: being as the number of new functionaries (23) to that of the former functionaries (70,) say, for round numbers 69: that number being 4,† this will be one-third of 4, namely, 1⅓.
4. Hence, average amount of the salaries placed every year at the disposal of the Chancellor, by the vacancies of that year, ... £1530 — which sum, to give the total value of his patronage, over and above that of the appointments already made, will be to be multiplied by 7, as below.
5. Average number of years' continuance of the same man in the chancellorship as per contra, say 8.‡
6. Years' purchase which an annuity for eight years is worth, as per contra, ‖ 7
7. Hence, total present value of patronage exercisable in future, ... £10,710

Hence, total value of the patronage gained, ... £37,110
Patronage given up, ... 10,640

Net profit, after deduction of the patronage given up, . . £26,470

Thus is the value of the patronage gained, more than three times that of the patronage given up.

So much for calculations and results: now for objections to them. "Vast," says somebody — "vast (it must be confessed) are these sums: vast, accordingly, would be the value of the patronage in question — the patronage gained by the noble and learned author of the measure, — supposing this same sum actually received by him. But, for the supposition of any receipt at all, at any rate, of any receipt approaching to the like of any such amount, what ground will you find? Yes: if he had children and grandchildren, all of whom he had to make provision for, and would have made provision for out of his own means, had it not been for this resource. But, for any such supposition, is there so much as the shadow of a ground?"

Not much (answer I:) not much — I must confess. But neither by this confession is

* On the per contra side, in the correspondent parts, the *words* are, as far as may be, the same, the *figures* alone different: of this identity, the use and consequence are — that, to the purpose here in question, any error that may happen to be found may be seen to be the less material.

† As per report from individuals by whom observation has been made of the vacancies which occur from all causes whatsoever—from vacancies occasioned by changes and promotions, as well as by mortality. By *tables of mortality*, it would not, as I have been told, be so much as 2: cause of the difference, in the instance of the functionaries in question, vacancies produced by changes and promotions.

‡ Taken from the list of *Keepers of the Great Seal*, as per Beatson's Political Index.

‖ By report of an official accountant, consulted for this purpose, about 6½.

¶ £26,400.] In a tract, intituled "The Bankrupt Act, with introduction, notes, and index— by a Barrister, p. 23, the sum at which the total is set down is £24,000, and no more: a slip, surely, either of the pen or the press.

confessed the impropriety of placing the sum in question to the account of *profit gained*.

In the first place — the question of chief practical importance, though it is but a collateral one, being as above shown, the one relative to *disinterestedness;* and this question turning — not upon *absolute*, but upon *comparative* values, namely, as between matter given up, and matter of the same sort gained, — the consequence is, that if the subject-matter in question were mere moonshine, it would not the less be entitled to a place in this account.

In the next place, this is one of the occasions to which the old saying about *meal and malt* applies: if he has it not in meal, he has it in malt; if he has it not in money, he has it in money's worth.

Reader, before you lie now the two sides of the evidence: which side (ask yourself) preponderates? — his Lordship's? His Lordship's, cry aloud in chorus the vast majority of those whose eyes either *gratitude* or *hope*, more especially the stronger power, keeps fixed upon the contents of the rich box of *bon-bons* which his Lordship has the distribution of: those members of the fourth estate not excepted, whose high lot (it has been said) it is to behold a frequent knife and fork lying before them at the noble and learned table: accordingly, to no person so beatified, is the question addressed. And, but for such patronage, from whom would this incense — all or any of it — be received?

For topics for this same incense, from which in this way the value of his Lordship's patronage receives increase, can there be any demand still remaining? No, surely: but, for argument's sake, suppose there were — a source from which it might receive completion, and *that* in a manner the most satisfactory, is a verse that may be seen, I do not remember in what page, of the *Gradus ad Parnassum*, the assistant so well known to all manufacturers of the so highly valuable commodity called a Latin hexameter verse. It consists of a verse by which any man to whom it happens to have a fancy for taking an airing in Greece at the top of Mount Parnassus, may with all facility, and as quickly as he could say Jack Robinson, as the saying is, give himself that gratification. It consists of eight words, which, when thus put together, constitute a panegyric on the blessed virgin, and have the curious property of composing an entire poem, of which any man who is curious enough may make himself the author. The property to which it is indebted for this magic power is this: the words are so selected, that in every order which they are capable of being made to assume, this sort of verse is composed of them. The verse is this: — "*Tot tibi sunt virgo dotes quot sidera cœlo:*" it is thus, by an arithmetical process, that so curious an effect is produced — ringing the changes upon these eight words. The following is a sample of the topics on which that same incense grounds itself: —

His admirable proficiency and exquisite skill in the art of disseminating "*useful knowledge*"* — the sound discernment and sound judgment displayed by him in the choice of subject-matters and operators — his skill in the creation of universities — that skill, of which *Londinia*† has already had, and her *Alma Soror Regia* is about to have, the benefit — his complete mastery of the theory and practice of legislation as it ought to be, as exemplified and demonstrated in and by his local courts' bill, and this his bankruptcy court bill, now so happily and triumphantly erected into an act.

No great chance is there (I must confess) — no great chance is there, of any Honourable Brougham, — who, smelling at the same nosegay with the Lord Erskine, may with him, in an *unlearned* state, feed with *thanksgiving* on about five thousand a-year, and with *hope*, on about as much more — exonerating his noble and learned father of the whole of this expense.

Profit, in *this* shape, it is true, he has not: but various *other* shapes there are in which he has it — shapes, having each of them its beauty; and in variety there is pleasure.

Calculate who can, the correspondent additional number of those, whom, like the members of one of James the First's parliaments, the additional patronage will throw "upon the knees of their hearts" (for in those days hearts had knees:) calculate this, and when your calculation is made, ask yourself what, when the means of sustenance are provided, what is it that money is good for, but to cause men to do the will of him who has it in his pocket? and, in a word, look the world all over, and say by how much is the appetite more canine for mammon in the shape of *money*, than for mammon in the shape of *power* in general, and in particular in the shape of *patronage?*

February 22, 1831, *Mirror*, p. 420.—"The only motive by which I am actuated, is the anxious and earnest wish to purify and amend the defects in the institutions of my country."

Such is his Lordship's "only motive." Nothing cares he about *fees:* nothing cares he about *salary:* nothing cares he about *patronage:* nothing cares he about *emolument*, in any imaginable shape: by any one, or all together, of the objects by the love of which the conduct of ordinary men is to such a degree hard driven, not a jog is capable of being given to his immoveable mind.

* See *Westminster Review* for April 1831.

† For his management of the University of London, see *Examiner* for August 28, 1831.

So much for the *shadow*; now for the substance: so much for *make-believe* disinterestedness. Reader, have you any curiosity to see a sample of what, in relation to these same arrangements, real disinterestedness, in conjunction with appropriate intellectual aptitude, would have produced? If yes, take the trouble to read what follows:—

1. As to the *number* of the functionaries of all sorts; this number, not greater than that which has been found necessary: and to find what is the number necessary, proceed in manner elsewhere recommended. Proceed upon the *deputation system*, as above explained. Begin with the minimum number; add other functionaries, one by one, as the need receives demonstration from experience; in two words, *fiat experimentum*: this is what common sense, when it has for its companion common honesty, prescribes; this is what gave immortality to *Lord Bacon*: be not either ashamed or afraid to take a leaf out of the book of Lord Bacon.

2. Next, as to remuneration in the shape of *emoluments*: for the purpose of reducing them respectively to a minimum, employ *competition*: fear not to employ in this case that instrument, the application of which has the approval of everybody in every other case.

This you will do, unless the advice of common sense, in union with common honesty, be found or deemed too hard to be digestible.

As to emolument, is that same exclusively adequate instrument so startling, that blindly employed precedent is preferred to it? Look, then, to the case of the London police magistrates.* In that case, four hundred a-year was sufficient for their emolument, and therefore would be for these commissionerships, as has been elsewhere demonstrated by uncontroverted and uncontrovertible reasons; in addition to the demonstration afforded by the urgency of the applications at all times made for these same defunct commissionerships.

So much for *general* suggestions. Would you wish to see them applied to particulars? Proceed on, and read what follows:—

1. In the immediate judicatory, judge one, and no more.

2. So in the appellate judicatory.

3. Grades of jurisdiction, these two, and no more.

4. Appeal to the Chancellor, not any.

5. Appeal to the House of Lords, not any.

To this sham security, exists there any person, by whom an efficient and honestly-meant security would be regarded as preferable? Of the sort which I would venture to propose to him, a model may be seen in the paper styled "The Parliamentary Candidate's Declaration," &c. Purposes of it, amongst others, these:—1. To furnish to the functionary, as far as it goes, a distinct comprehensive view of the field to which his labours will be to be applied; 2. To call in the aid of the *popular* or say *moral* sanction, for securing appropriate moral aptitude, against departure from the right path, in ways to which the power of the legal sanction is not applicable; 3. To present to the minds of *locators*, a standard to which they may make application of what they understand to be the characters of the several persons locable, whom the occasion offers to their choice. *Locator*, on the present occasion, the Lord Chancellor: persons *locable*, all persons in whose instance adequate ground has place for regarding them as endowed with sufficient *intellectual* and *active*, without objection on the score of *moral*, aptitude.

Will it be said or thought, that for the commissioners in question, a more *extensive* portion of *law-learning* is requisite, than for police magistrates? To any such supposition, I make answer—

1. Not more, nor yet so much. Of these commissioners the jurisdiction is confined, in the branch of law called the *civil*, to a comparatively narrow corner of that field: and with the penal branch it has nothing, or next to nothing, to do: of the police magistrates, the jurisdiction spreads, in one way or other, over the penal branch in its whole extent, and over sub-branches in great variety of the *civil* branch.

2. For the possession of this so desirable an endowment on the part of his fee-sucking children, no real provision whatsoever, in and by this act, does the noble and learned father of it make: for the possession of this branch of appropriate aptitude, no better nor other security does it provide than was provided in the *police magistrates' salary-raising act*, by the right honourable sham reformer, in whose steps the noble and learned lord, on this occasion at least, treads blindfold. Eating, or making believe to eat, a certain number of dinners in one or other of four large apartments called *halls*, followed by a relative fast kept holy during a certain number of years, is the security with which Sir Robert Peel, in despite of all my remonstrances, remained inexorably well satisfied: and when, in the form of a bill, this same bankruptcy act was concocting, all the while, on the noble and learned table lay that work of mine, in which the absurdity and mischievousness of that same sham-security stands demonstrated.

3. On the occasion of his appointment, to *relevant* and appropriate law-learning no regard, or next to none, is ever paid: it is not the fashion. That which in this respect is the

* In "Official Aptitude Maximized," &c. "Observations on Mr. Peel's Police Magistrates' Salary-raising Bill," anno 1825. *Antea*, p. 328.

fashion, there has been occasion to hold up to view elsewhere in these pages. Of what is called *equity*, what knew Lord Lyndhurst, when the charge of dealing out that high-priced commodity in so high a grade was put into his hands? What knew of it Lord Brougham — what knew of it Lord Vaux — or either of them? What opportunities — what means — of such knowledge had they had — these noble and learned persons, any of them? No: considerations styled political, alias *party*, were, as everybody knows and says, the cause of choice in those cases; the like considerations, or private and personal benefit, or good-liking, have of course been, and will continue to be, in these.

Thus much for a *stay-stomach*, until the time is arrived for application made of the all-comprehensive local judicatory system: the business of this temporary and make-shift institution of a special judicatory for bankruptcy business, will then be absorbed and merged into the common mass of the business of those several judicatories.

Noble and learned eyes! can you carry yourselves so far as to the other side of the Tweed? In Scotland, is there any bankruptcy court? No such thing. Any insolvency court? No such thing. And the assets of insolvent debtors — are they the less effectually disposed of for the benefit of creditors? No such thing.

In Scotland, had not the noble and learned father of this act, if not the whole, the last and finishing part, of his education? In his advocate's shape, did not — in his chancellor's state, have not already — those same noble and learned eyes found need to carry themselves all over that part of the island? There sits, moreover, the Lord Advocate. Scotland — has not she a sort of Attorney-General, but with authority much more extensive than the English Attorney-General, in the person of that same Lord Advocate? To the Lord Chancellor, had no opportunity ever presented itself of hearing how matters stand, in this respect, from that same Lord Advocate? Exists there that man with whom he is in habits of closer intimacy, or more constant communication, than with that same Lord Advocate?

Appropriate *examination*; and, for ascertaining the maximum of the pecuniary remuneration needful, *competition* — competition among those by whom the examination has been undergone — competition, that operation by which, between *dealers* and *customers*, prices in general are settled: — these are the instruments by which, according to my principles, economy and official aptitude are secured, and made to dwell together in perfect amity. This, in both departments — the *administrational* and the *judiciary*: but in the judiciary in particular, these form no more than a part of the securities which my code has provided for appropriate aptitude in the judiciary department.

For the good people at large, when the fulness of time shall have been accomplished, is all this information designed: — all this information, the object of which is — so to manage matters, as to cause the interest of functionaries, in all official situations, to be in exact coincidence with their respective duties. As to learned lords and gentlemen, whose eyes are so pertinaciously closed against all such information by a compound of sinister interest, interest-begotten prejudice, and authority-begotten prejudice, where is the lever long enough to wrench them open?

To doctrines such as these, when will public functionaries in general, and law-learned lords and gentlemen in particular, lend a willing ear, and act accordingly? When the population of Newgate and St. Giles's lend a like willing ear to a sermon having for its text "Thou shalt not steal," amend their ways, and act according to those words.

Alack-a-day! a little more, and I should have forgot to acknowledge the oath — the security afforded by that phantasmagoric cable, with such care and punctuality provided for binding a functionary to his duty. Well then, here it is. Not so much as one of all the whole three-and-twenty new functionaries — creatures of his Lordship's creation — not so much as one of them all is there by whom that same cable has not been, nor of the future contingent ones, by whom it will not have been, swallowed.

In regard to qualifications and security, thus, then, stands the matter. For appropriate *intellectual* aptitude, we have the security composed of the *manducatory* and the *jejunial*, as above mentioned: for appropriate *moral* aptitude, we have the *oath*: equivalent to which mockery, and instead of noxious, as that is, perfectly exempt and pure from all evil would have been the loyal song of *God save the king*; or, in learned language from the grammar of the royal school at Westminster, the harmonious couplet —

"Litera si præcat vocalis pura vocatur,
Ceu *reus*; impura est præcat si consona, ceu *rus*."

and here, in this same couplet with the word *pura*, as a gem set in it, might have been seen Morality, with her sister Intellectuality, hand in hand. Nonsense, so far as regards contribution to the end which ought to be kept in view, nonsense being the matter which that chosen *formula* is composed of, I propose this for a substitute to it, as being composed of less trashy nonsense!

Here ends the thread of these Observations: and here would end the whole publication, but for the demand for the reason of the change of the title from *Observations on the Bank-*

ruptcy Court Bill to *Lord Brougham Displayed*.

Important as is this subject, there is one which is still more so; and that is, his continuance in the office now filled by him. Law reform, or a sham reform—on him, more than on any other man, depends the solution of the momentous question, which of the two shall be our lot? Shall it then continue, or shall it cease to be, filled by him? This is an ulterior question; a question, on the answer to which it depends whether during our joint lives any fruit can, with any hope of success, be looked for by the labours in which my long life has, the whole of it, found the greatest part of its occupation, and the dearest part of its hopes. Now, then, what is my situation? That of a man who finds imposed upon him the painful necessity of stopping the course of those same labours, for the purpose of doing what depends upon him towards conferring this benefit on his country and mankind.

Four occurrences present themselves, as the most prominent of those which have concurred in the production of this distressing persuasion: — 1. The charity inquiry job; 2. The advocacy of fee-gathering; 3. The opposition made by him to the ballot; 4. His education jobs.

1. First, as to the *charity inquiry* job.

For anything like a full and detailed examination of it, this is not the place: by a few general and leading observations, the course adapted to an instructive and useful examination of it may, perhaps, be seen to be pointed out.

1. So long as the judiciary system, with its procedure, continues to be what it is, not good, but evil, is what the inquiry, carried on as it is, not according to, but in contravention of, the *greatest-happiness* principle, will have for its net product.

2. So enormous is the factitious expense of procedure in the judicatories called *equity courts*, in which this business would have to be and is carried on, — that, before it had proceeded any comparatively considerable length — any length capable of contributing effectually to its professed purpose — namely, the institution of a system of all comprehensive national education, — parliament, the nation, and the treasury, would naturally, not to say necessarily, become impatient of it, and that in such sort, that to prevent further effusion of the life-blood of the treasury, a bandage would be applied to it.

As to the patronage, the persons by whom the benefit of it has been reaped, are his learned brethren the profession, in every branch of it to which the business has given employment.

In the report* which on this subject has been laid before the Honourable House, may be seen the amount of the business, with its profits, for which they stand indebted to this one of his institutions on that score.

Had anything better than power, patronage, and ambition-serving popularity — had, in a word, the happiness of the community been at the bottom of all this care of his, — would he, when the prospect of power and patronage had ceased, have turned his back upon this same charity business, and left it to deteriorate by neglect? No, surely. Now then, mark well how he dealt with it.

1. Quantity of time left unemployed in the *business*, four months out of the twelve;† so says an acknowledgment made by the chairman of the board — the person whose situation rendered it his interest to make the proportion of time employed in that same business as great as possible.

2. Quantity of time professed to be employed in the *journeys*, not more than four months out of the twelve.†

3. Quantity of time professed to be employed in digesting the documentary evidence and drawing up the reports thereupon made, the remaining four months — a quantity of time equal to that professed to be employed in the journeys and the elucidation of the evidence together.†

4. Every member left at liberty to employ himself in his professional pursuits for any portion of his time, at pleasure — of the time he was to be paid for at the rate of £1500 a-year at the public charge (so ordains the act;) on the *circuits* not excepted: actually so employed, these same functionaries one or more of them: one of them for and during a more or less considerable portion of his time occupied in the exercise of another office in *Ireland* — namely, that of *commissioner of Irish education*.†

5. By loss or destruction of documents, through negligence or wilfulness, charities in unknown numbers left exposed to be extinguished.

6. No thought bestowed on the prevention of breaches of trust in this shape in time future.

7. For the preservation of the several documents constitutive of title, an act some years ago having passed, the fruit of his so anxiously fostering care, the object of it carried into effect in the instance of no more than a few counties, and then left in the state of a dead letter.*

Three several *modes* there are, in one or

* No. 361: date of the order for printing, 8th May 1830: title, Court of Chancery.

† House of Commons paper, March 18, 1828, No. 225, intituled "Evidence taken before the Finance Committee, and the Return laid before the Committee in 1828, which were presented to the House upon the 24th day of June 1829.—John William Warren, Esquire, called in and examined."—Pp. 2 to 6.

more of which it is in the power of the fee-gatherer to make additions — and, generally speaking, to an indeterminate and unlimited amount — to the quantity of the depredation committed by him by means of this instrument: *one* is — by addition made to the quantity of the written matter, in proportion to which the addition is allowed to be made; *another* is — by addition made to the *number* of the *occasions* on which the fee is allowed to be exacted; and a *third* is — by addition made to the number of *days* or other portions of time at which he is occupied, or supposed to be occupied, in that same quantity of business, be it what it may; thus *splitting* the whole time into a number of fractions — their distance from each other determinate and limited, or indeterminate and unlimited — for the purpose, and with the effect, of exacting a fee for each such particle of *time;* thus giving increase to the *expense* imposed upon the parties interested, as also to the *delay*, in proportion not only to the number of these same particles of time, but also to the distance between each of them: three modes — all of them so many *concealed* modes — over and above the *open* mode, by addition made to the amount of each fee so allowed to be exacted; of which last, the effrontery of it notwithstanding, examples are not wanting.*

By the *quantity-enlarging* shape of the abuse, is produced the maleficent lengthiness of each portion of the statute-book, in the existing state of it; and thence will be produced the obstruction which will of course be opposed to every proposal for the removal of it: by the other, the *time-splitting* abuse, the enormity of the factitious quantity of delay with which are loaded the proposed laws termed *private bills*, throughout the course of their passage through parliament.

By its *quantity-enlarging* shape, in conjunction with the utter absence of all classification and order in the disposition of the matter, is produced the impossibility a man is under of coming at the knowledge of the *rights* of the benefit of which, without such knowledge, he must be deprived; of the *wrongs* to which, but for such knowledge, he must, without remedy, remain exposed, at the hands of all other individuals; and the punishments which he must remain exposed to suffer by the hands of government: and, in short, to fill up the measure of maleficence, to this abuse, in conjunction with the leaving the rule of action in the shape of the imaginary sort of law called unwritten law, alias *jurisprudential* law, alias *common* law, alias *judge-made* law, is owing the non-existence of an all-comprehensive code.

On two achievements is based whatsoever can be done in the way of law reform — namely, appropriate *codification*, and appropriate *judiciary establishment*, with its system of procedure. To the last of them his Lordship's implacable hostility is but too indisputable; it has already been held up to view: to the former, it is but too probable, not to say certain — sinister interest, interest-begotten prejudice, and interest-begotten sympathy, join with consistency in calling for it at his hands. Before him has all along lain that volume of mine, in which the demand for codification, and the demand for a new judiciary establishment, with its procedure code, are spread out in detail: of the latter, what use has been made by him, may be seen by whosoever has the requisite curiosity and patience.

By all these jobs of his, he has stretched out the right hand of fellowship to jobbers of all sorts, whose jobs are not of a magnitude too small to be included in such an alliance: giving thereby an invitation to maximize the number of the several jobs, the profit from each, and the quantity of the sustenance and life-blood of the community let out by every stab thus given to the constitution.

In his eulogium on education — in his "schoolmaster sent abroad" — he may have seen (and who will say of him that he did not see?) the schoolmaster sent abroad by him throughout all nations in the quality of *collector of the customs*, in the shape of praise, — to gather in the tribute of praise and popularity for his own behoof: laying it up in store, in readiness to be applied to whatsoever purpose the turn-up of affairs should at any time present him with an opportunity of employing it to advantage. Actions are no bad interpreters of intentions. Yes, to whatsoever purpose: and already have we seen to what sort of purposes his treasure, in this shape, has actually been applied. "And by this service," says some one, "has not great benefit been actually and already rendered? — rendered, *certainly* to *this* country, *probably* even to *others:* and, for this benefit, is not correspondent gratitude unquestionably his due?" *Answer:* Not altogether so assuredly. Gratification? Yes — gratification on our part; but *gratification* and *gratitude* are different things: cause for *gratification* is in proportion to *results:* but, cause for *gratitude* depends upon intentions. On the present occasion, the question is — this all-needful benefit, shall it or shall it not be received by us with gratitude? And if, how great soever the benefit may be, the party for whose service the benefit was intended, was not ourselves but himself alone, what is the claim it gives him upon our gratitude?

Ballot — what shall I say of the ballot? — what of his Lordship's sentiments in regard to

* See "*Indications respecting Lord Eldon*," in "*Official Aptitude Maximized*," &c. *antea*, p. 348.

it?—to the question whether the opinion, the wish, the exercise given by man to his power as and for his own, shall be the result of his own will, or that of another man — of a man who acts as a tyrant over him?—whether such his act and deed shall be genuine or an imposture?—whether, by hundreds of thousands, Englishmen shall remain subjected to no other option, than that of each man violating his own conscience, or suffering pecuniary loss to an amount to which there is no other limit than that of the whole means of his subsistence? In this one feature, as in a mirror, behold the frame of mind of this our self-professed reformist.*

After an attack made, and *thus* made, upon one of the most admirable members this country ever saw of the most highly talented profession — one of the most amiable men I can think of in private life, I now take this my last departure from the subject.

Well, then, this being the manner in which *I* deal by *him*, what is the manner in which *he* deals by *me*? and this, after having seen the first part of these same Observations. Often does it happen to him to speak of me; seldom in any other terms than such as are a mixture of affection and even more than respect; never in terms of the opposite description: to this effect is what it has been my good fortune to hear, from a variety of quarters — with what a mixture of surprise and gratitude let any one imagine. Had the thought of a fillip to a single individual who has thus shown how little he cared about it, outweighed, in my mind, one of the most important ingredients in the welfare of the most extensive empire upon earth, not to speak of "the rest which it inhabit," I should have done otherwise; but, considering whom it has been written by, let any one judge, whether anything, that could be written with the *view* — the public and all-important view — these pages are written with, could be regarded as superfluous. JEREMY BENTHAM.

* In this my conception of his Lordship's frame of mind, do I stand alone? Of the contrary, the following epigram will present a demonstration. It has for its author an official person, who has for his duty the reporting his opinion of certain official proceedings: in how great a degree the severity of the character given of his said Lordship in that flight of fancy, goes beyond that given of him by this discussion, in the giving of which I am now occupied, will be visible to every eye. By this severity, two things will be demonstrated: 1. That this of mine is not singular; and 2. That so far is mine from being so, that *one* person there is, whose qualifications are objects of respect to more than *one* even of his Lordship's devoted friends, — yes, one person, at least, there is, who even goes beyond me in severity.

(From *The Examiner*, of August 14, 1831.)

THE FATE OF A BROOM.

AN ANTICIPATION.

Lo! in corruption's lumber-room,
The remnants of a wond'rous Broom,
That walking, talking, oft was seen,
Making stout promise to sweep clean;
But evermore, at every push,
Proved but a stump without a brush.
Upon its handle-top a sconce,
Like Brahma's, looked four ways at once;
Pouring on King, Lords, Church, and Rabble,
Long floods of favour-currying gabble;
From four-fold mouth-piece, always spinning
Projects of plausible beginning,
Whereof said sconce did ne'er intend
That any one should have an end:
Yet, still, by shifts and quaint inventions,
Got credit for its good intentions,
Adding no trifle to the store,
Wherewith the Devil paves his floor.
Found out at last, worn bare and scrubbish,
And thrown aside, with other rubbish,
We'll e'en hand o'er the enchanted stick
As a choice present for Old Nick,
To sweep, beyond the Stygian lake,
The pavement it has helped to make.

March, 1831.

POSTSCRIPT.

AFTER the last word of this present work had been written, a book, which bears for its title *The Black Book*, was put into my hands by a friend, who had been witness to the writing of the pages of this work as it went on, and by whom the discovery had not been made before the day of his giving the information to me. It is inserted here, as another piece of evidence of the nature of that adduced in the preceding note.

"BROUGHAM, HENRY, *(Winchelsea,) Barrister at Law.*

"The political tendencies and acquirements of this Member have been so often set forth, that it would be a waste of the reader's time to indulge in disquisition on so trite a theme. A strange fatality seems to attend every project to which Mr. Brougham directs his efforts: no one has abounded in more useful suggestions, nor evinced greater and more searching powers in the exposition of abuses; yet it cannot be said he has originated and carried through a single measure by which the community has been materially benefited. This is a very "lame and impotent conclusion" after a public life of great bustle and considerable duration.

"Mr. Brougham's exposure of the abuses of Charitable Foundations, by which he showed the POOR had been robbed of near TWO MILLIONS of annual revenue by bishops, parsons, and gormandizing corporations, did him infinite honour; but nothing useful has resulted from the discovery of this mine of pious plunder. The learned gentleman suffered his bill on the subject to be frittered of all its usefulness and efficiency; the job got into the hands of commissioners, who, with enormous salaries, have been perambulating